

## **EXHIBIT C**

**FREEDOM COURT REPORTING**

Page 1

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE MIDDLE DISTRICT OF ALABAMA  
3 SOUTHERN DIVISION  
4

5 CASE NUMBER: 2:06CV378-WKW

6 ELAINE M. COLEY,

7 Plaintiff,

**ORIGINAL**

8 vs.

9 ALABAMA MEDICAID AGENCY,

10 Defendant.  
11

12 S T I P U L A T I O N

13 IT IS STIPULATED AND AGREED by and  
14 between the parties through their respective  
15 counsel, that the deposition of Elaine M.  
16 Coley may be taken before Angela Smith, RPR,  
17 CRR, at the offices of Wilkerson & Bryan, at  
18 405 South Hull Street, Montgomery, Alabama  
19 36104, on the 12th day of January, 2007.  
20

21 DEPOSITION OF ELAINE M. COLEY  
22  
23

**FREEDOM COURT REPORTING**

Page 50

1 any other departments besides DOT and  
2 Medicaid?

3 A. I believe I worked just a  
4 short time for Mental Health.

5 Q. You believe you did, or you  
6 know you did?

7 A. I know I did.

8 Q. Okay. Approximate time  
9 periods, Ms. Coley?

10 A. I could find out. I just  
11 don't remember right now. And I'm sorry.

12 Q. Is it before you went to DOT?

13 A. You know, I think it was in  
14 between some assignments that I had at DOT.

15 Q. Let's start with DOT. Aside  
16 from the ones you've already told me about,  
17 tell me about what you remember next, as far  
18 as working for DOT.

19 A. I know I went back to DOT in  
20 1999 on a permanent position.

21 Q. Well, let's start there, since  
22 you seem to have a recollection of that one.  
23 Okay?

**FREEDOM COURT REPORTING**

Page 51

1 A. Uh-huh.

2 Q. Did you apply for a position  
3 in 1999, or were you transferring from a  
4 temporary position?

5 A. No. I transferred from a  
6 permanent position from the Department of --  
7 Okay. Here we go. From the Department of  
8 Corrections.

9 Q. So, you also worked at the  
10 Department of Corrections?

11 A. Yes, ma'am, I did.

12 Q. Okay. What was your position  
13 at the Department of Corrections?

14 A. I was an ASA I.

15 Q. Okay. Tell me what an ASA is.

16 A. ASA I is an administrative  
17 assistant.

18 Q. Okay. Is that secretarial  
19 work?

20 A. It is secretarial work.

21 Q. Okay. How long were you in  
22 that job?

23 A. I believe I went there in '94.

**FREEDOM COURT REPORTING**

Page 52

1 '94.

2 Q. Okay.

3 A. Wait. No, no, no, no. I went  
4 there in -- I'm getting these dates mixed  
5 up. I went there in -- Okay. In '98 I to  
6 work at Corrections.

7 Q. Okay.

8 A. In '98, I worked for  
9 Corrections. And then I left Corrections  
10 and went to Transportation.

11 Q. Okay. In '98, you worked for  
12 corrections as an ASA 1?

13 A. Yes.

14 Q. Who was your supervisor?

15 A. Gussie Jackson.

16 Q. Male or female?

17 A. Female.

18 Q. Okay. Did you have any other  
19 supervisors while you worked at DOC?

20 A. No.

21 Q. Okay.

22 A. I'm sorry, DOC?

23 Q. Department of Corrections.

**FREEDOM COURT REPORTING**

Page 53

1 A. Department of Corrections, no.

2 Q. Okay. So, Ms. Gussie Jackson  
3 was your supervisor?

4 A. Uh-huh.

5 Q. Were you ever disciplined or  
6 reprimanded or called in to anybody's  
7 office?

8 A. At DOT -- At DOC, I think I  
9 stayed there a year and a half, if I'm not  
10 mistaken, a year and a half, approximately.

11 Q. Okay. Back to the question of  
12 was there ever any disciplinary action,  
13 reprimands?

14 A. No.

15 Q. Were you evaluated on your  
16 performance?

17 A. I was.

18 Q. And do you recall what those  
19 evaluations showed?

20 A. Exceeds standards.

21 Q. Exceeds standards. Okay.

22 A. Exceeds standards.

23 Q. Did you ever have any problems

**FREEDOM COURT REPORTING**

Page 54

1 with coworkers, personality conflicts,  
2 anything like that?

3 A. No.

4 Q. Anybody else there?

5 A. No.

6 Q. Okay. And why did you leave  
7 your position as an ASA I with DOC?

8 A. I transferred out. It was a  
9 lateral transfer.

10 Q. To DOT?

11 A. Uh-huh. Yes.

12 Q. And you think that was  
13 probably in the year 2000?

14 A. No. The transfer was to DOT,  
15 Department of Transportation, the first -- I  
16 believe it might have been the first part of  
17 1999.

18 Q. Okay. And who was your  
19 supervisor there?

20 A. Benita Crosskno,  
21 C-R-O-S-S-K-N-O.

22 Q. And what was your job title  
23 there?

**FREEDOM COURT REPORTING**

Page 55

1 A. ASA I.

2 Q. While you were an ASA I, while  
3 Ms. Benita Crosskno was your supervisor, did  
4 you have any sort of reprimands,  
5 disciplinary action, any kind of critique of  
6 your work?

7 A. I did.

8 Q. Okay. Tell me about that.

9 A. Ms. Crosskno accused me of not  
10 calling in to work one day, saying that I  
11 had not called in. But I did call in. I  
12 just couldn't get in on the lines, because  
13 the lines was -- sometimes you couldn't get  
14 through because our lines would be messed  
15 up.

16 And she reprimanded me because  
17 I had spoken with another employee on one  
18 occasion. The employee was upset and came  
19 to me upset. And I tried to console the  
20 person. And she told me that -- Well, she  
21 had evidently -- Benita said she had  
22 witnessed an incident. She said she did not  
23 witness the incident, and said she didn't --



**FREEDOM COURT REPORTING**

Page 64

1           Q.       Okay. Tell me why you thought  
2       it was your race and your gender and your  
3       age that she said these things that you  
4       testified about.

5           A.       Well, I think it was my race,  
6       because she always had something to say  
7       about the Consent Decree. She would always  
8       say: Well, these black people come in and  
9       they think that they can get away with the  
10      Consent Decree, or this or that. She said  
11      they think that because the Consent Decree  
12      will save everything for them, or get them  
13      by with everything. And then she called me  
14      old Bimbo.

15          Q.       How old was she, do you  
16      remember?

17          A.       I don't know how old she was.

18          Q.       Okay. After you worked for  
19      Ms. Benita Crosskno, where did you go next?  
20      You mentioned that you transferred out.  
21      Where did you transfer to?

22          A.       I went to Medicaid.

23          Q.       Okay. And what year was that?

**FREEDOM COURT REPORTING**

Page 65

1 A. 1999.

2 Q. Okay.

3 A. I'm sorry. It was 2000, the  
4 year 2000.

5 Q. And what job title did you  
6 have?

7 A. I was still an ASA I.

8 Q. Okay. Who was your  
9 supervisor?

10 A. Faye Smith.

11 Q. And how long was Faye Smith  
12 your supervisor?

13 A. Approximately a year and a  
14 half.

15 Q. Okay. While Faye Smith was  
16 your supervisor, did you run into any  
17 problems -- Let me strike that.

18 While Faye Smith was your  
19 supervisor, were you ever disciplined or  
20 called into her office or counseled about  
21 your work habits?

22 A. No. The only problem I could  
23 see that I had with her was, I'm one of

**FREEDOM COURT REPORTING**

Page 69

1 Q. And that was your personal  
2 picture that you brought from home?

3 A. No. Well, I bought it. I  
4 didn't bring it from home. It was a  
5 picture --

6 Q. But it wasn't Medicaid's  
7 property, it was your own personal property?

8 A. It was.

9 Q. Okay. Did you have a problem  
10 with him asking you to remove it?

11 A. Well, I kind of did, but it  
12 wasn't no big deal. I moved -- I removed  
13 it.

14 Q. Okay. Anything else?

15 A. No.

16 Q. No other discipline?

17 A. No disciplines.

18 Q. What was your rating on your  
19 evaluation?

20 A. Meets standards.

21 Q. Do you recall why it was not  
22 exceeds standards?

23 A. Well, I did discuss it with

**FREEDOM COURT REPORTING**

Page 70

1 him, and he told me that he thought that --  
2 He said he thought that -- What was it he  
3 told me? Anyway, it was a misunderstanding,  
4 because when I got to that area, there was a  
5 workload that there was a huge workload. He  
6 thought they'd been trained. Well, after  
7 Ms. -- After Audrey left, there was nobody  
8 to train me. So I had to learn the job as  
9 well as work with an extra load of influxing  
10 work that came in.

11 So he said that's why he  
12 graded me meets standards because he thought  
13 that I was kind of slow because I wasn't  
14 keeping up with the girl that was already  
15 there. But that was after the fact, because  
16 once I explained it to him after we had it,  
17 and he told me, he said: Well, I did not  
18 know. You know, he said: I thought you had  
19 been trained.

20 Q. So, were you satisfied, then,  
21 after your discussion?

22 A. Well, I mean, after we talked,  
23 I knew why he had graded me the way he did,

**FREEDOM COURT REPORTING**

Page 137

1           Q.       I'm sorry, you can just read  
2 it silently. You don't have to read it out  
3 loud.

4           A.       Okay.

5           Q.       Okay. Are you finished?

6           A.       Uh-huh.

7           Q.       Okay. You say now that you  
8 are complaining that: Medicaid engaged in  
9 discrimination in performance appraisals,  
10 costing Plaintiff promotional and  
11 advancement opportunities. Defendant placed  
12 negative information in my personnel file as  
13 well; is that right?

14          A.       That's correct.

15          Q.       Okay. Let's first talk about  
16 the discrimination in the performance  
17 appraisals you refer to in that paragraph.  
18 Tell me what the first performance appraisal  
19 is that you're talking about.

20          A.       The first performance  
21 appraisal is the one with Linda Lackey and  
22 Mary Finch.

23          Q.       Okay. And did you produce

**FREEDOM COURT REPORTING**

Page 141

1 particular method because she had some  
2 personal issues against me or whatever.  
3 Now, what, I don't know. Because she came  
4 to me one day when I was sitting at my desk  
5 and said she noticed that I had had some  
6 problems. And that was a total shock to me  
7 because she said she thought I was upset  
8 with her or with somebody. And I told her,  
9 I said: I'm really not upset with anybody.

10 But after -- Shortly after  
11 that, she proceeded to do my evaluation, and  
12 accused me of not doing the evaluation --  
13 not doing the work that I had been assigned.  
14 And she said that I had had -- I raised my  
15 voice at her, if I'm remembering correctly  
16 from some stuff I read from the evaluation  
17 that I had.

18 She said that I had raised my  
19 voice at her in a demeanor. And that since  
20 she'd talked with me earlier, she had seen  
21 some improvement in my work.

22 And the discrimination part  
23 was, I think that basically she did it

**FREEDOM COURT REPORTING**

Page 142

1 because -- Well, my thing is that she has  
2 not -- she didn't do anybody else like that.  
3 She never called anybody else in and accused  
4 them of not doing their work.

5 Q. Well, could that --

6 A. When I know that there were  
7 other employees who were missing project  
8 deadlines and not meeting deadlines.

9 Q. And how do you know what other  
10 employees were doing?

11 A. I was working with them.

12 Q. Was it the same deadline that  
13 you were to meet?

14 A. Yes. It was entailed in the  
15 same deadline.

16 Q. So, is your claim, then, that  
17 you were talked to about not meeting a  
18 deadline, and other people had the same  
19 deadline, but they weren't talked to about  
20 it?

21 A. Well, my claim is --

22 Q. Yes or no.

23 A. Yes.

**FREEDOM COURT REPORTING**

Page 143

1 Q. Okay. So, you said that she  
2 came to you before the performance  
3 appraisal. How many days before?

4 A. I don't remember.

5 Q. More than a week?

6 A. I don't remember.

7 Q. More than two weeks?

8 A. I don't remember.

9 Q. The day before?

10 A. I don't remember.

11 Q. So, you have no idea what  
12 period of time?

13 A. I don't know whether it was  
14 the day before, two weeks before. I don't  
15 remember. I don't remember.

16 Q. Okay. But in any event, she  
17 counseled you, then, about what she  
18 considered to be work-performance issues; is  
19 that correct?

20 A. Well --

21 Q. Yes or no?

22 A. Not work-performance issues.

23 Q. Okay. Then what was it?



**FREEDOM COURT REPORTING**

Page 144

1 A. My attitude.

2 Q. Your attitude?

3 A. Yes.

4 Q. Okay.

5 A. At that particular time. She  
6 seemed to have thought that I was angry  
7 about something.

8 Q. Were you?

9 A. No, I wasn't.

10 Q. Everything was great up until  
11 she came to you and asked you that; is that  
12 right?

13 A. Well, it wasn't necessarily  
14 great, but I wasn't angry at anybody.

15 Q. Were you ticked off at  
16 anybody?

17 A. No.

18 Q. Were you unhappy with  
19 anything?

20 A. No. Not particularly, at that  
21 time.

22 Q. Were you a little bit?

23 A. No.

**FREEDOM COURT REPORTING**

Page 149

1           Q.       Okay. So, then, she tried to  
2 talk to you and you told her there was  
3 nothing wrong. And she said: I want you to  
4 know if you have any problems, you can come  
5 to me?

6           A.       Uh-huh.

7           Q.       Okay. So, what does that have  
8 to do with the discrimination on a  
9 performance appraisal that we were talking  
10 about?

11          A.       Well, I think that later on it  
12 escalated to the point as to where she  
13 decided that she was just going to break me  
14 down on my evaluation.

15          Q.       She just decided out of thin  
16 air that she was going to give you a bad  
17 grade?

18          A.       As far as I could tell, she  
19 did.

20          Q.       Okay. So, were there any  
21 incidents between the time that she talked  
22 to you and the time you had your evaluation  
23 where she counseled you anymore or talked to

**FREEDOM COURT REPORTING**

Page 150

1 you about your attitude?

2 A. Not that I know of.

3 Q. Did you go to her with any  
4 problems?

5 A. No, I didn't.

6 Q. And have you had any problems?

7 A. Not that I know of.

8 Q. Okay. You were getting along  
9 well with her and with everybody else?

10 A. Well, I thought I was.

11 Q. Okay. Well, you just said  
12 that things escalated by the time of your  
13 evaluation from what?

14 A. I mean, with her. I mean,  
15 with her. And as far as she was -- the  
16 things she was doing. Just like when she  
17 came to me and asked me was something wrong  
18 with me. I didn't think anything was wrong  
19 with me. I wasn't mad at anybody. I wasn't  
20 angry at anybody. I felt like she probably  
21 just went on with whatever she had in her  
22 mind.

23 Q. Well, let me ask you this. Is

**FREEDOM COURT REPORTING**

Page 151

1     there anything wrong with a concerned  
2     supervisor going to an employee and saying:  
3     You know what, I think there may be  
4     problems, I just want to --

5             A.       No, there's nothing wrong with  
6     that.

7             Q.       Okay. Did you have a problem  
8     with it in this instance?

9             A.       No, I didn't.

10            Q.       Okay. I guess I'm trying to  
11     figure out still how something escalated  
12     between that time and the evaluation.  
13     Nothing else happened? You didn't have any  
14     conversation with her that raised a red flag  
15     or made you uncomfortable?

16            A.       No.

17            Q.       Okay. So take me to the day  
18     of the evaluation.

19            A.       Well, the day of the  
20     evaluation we sit down and we talked, and I  
21     told her, I said: Linda, I see that you've  
22     given me this score. I said: Isn't there  
23     another score that I'm supposed to have?

**FREEDOM COURT REPORTING**

Page 152

1 Because I was thinking that she was going to  
2 do part of it, and then Charles Shelnut  
3 should have had some input in it.

4 She said: No, Elaine. She  
5 says: I don't think that -- She said:  
6 You've been up here X amount of months. I  
7 don't remember what she told me. She said:  
8 But -- the amount of months. She said: And  
9 I'm doing your evaluation. I told her: I  
10 don't think that that's following procedure.  
11 I said: The procedure is that you should  
12 have gotten some input from Charles Shelnut.  
13 She told me, she said: Well, okay. So she  
14 said: Well, just hold on a minute.

15 She got on the phone and she  
16 called Mary Finch. So Mary Finch came up  
17 and sat down and talked to me and explained  
18 to me. She said: Well, I think -- And I  
19 told her, I said: Well, the score that you  
20 have here, I said: I'm supposed to have  
21 another score because I haven't been here a  
22 whole evaluation period.

23 Q. And what was an evaluation

**FREEDOM COURT REPORTING**

Page 154

1 right now. I can get back with you with  
2 that information.

3 Q. Okay.

4 A. I had -- At the time I had  
5 looked it up, and I saw where they needed --  
6 Because I knew I had not been there a whole  
7 evaluation period. See, I came to that  
8 office in February of '03, and that was,  
9 like, in June of '03.

10 Q. Okay.

11 A. So the majority of that  
12 evaluation period was done in the Elderly  
13 and Disabled Section. Mr. Shelnut was  
14 called, however.

15 Q. Okay. And so, did he give  
16 input into your evaluation?

17 A. He did.

18 Q. Okay. Did that satisfy you?

19 A. Well, I ended up with a meets  
20 standard score.

21 Q. Were you satisfied with that  
22 score?

23 A. I was not satisfied with it,

**FREEDOM COURT REPORTING**

Page 155

1 but I did not rebuttal it, because it was a  
2 meets standard category.

3 Q. Okay. Tell me what about it  
4 you were not happy with.

5 A. Well, first of all, I was not  
6 happy with it because she had not looked up  
7 and did not know the procedure. And it  
8 seems as to me if I had not known -- She was  
9 my supervisor. If I had not known this  
10 procedure, she would have given me a lower  
11 score.

12 Q. But you told her, though, and  
13 she did what she was supposed to do?

14 A. Well, she was supposed to have  
15 known, Ms. Carter. She was supposed to have  
16 known.

17 Q. I understand that that's your  
18 opinion.

19 A. She was my supervisor. She  
20 was grading me on different things. So I  
21 was wondering -- It gave me to wonder -- It  
22 made me wonder why she would want to grade  
23 me low if she did not know the procedure.

**FREEDOM COURT REPORTING**

Page 156

1 Q. Well, whether or not she knew  
2 the procedure, you told her what you thought  
3 the procedure was. She obviously contacted  
4 Mr. Shelnut. He gave his input. And you  
5 got a meets standard. And you, in fact, got  
6 a raise, didn't you?

7 A. No, I didn't.

8 Q. You didn't get a raise at that  
9 time?

10 A. I did not.

11 Q. Okay.

12 A. Because they were frozen.  
13 Nobody at the agency was getting a raise.

14 Q. Was it recommended, though,  
15 that you get a raise?

16 A. Well, with a meets-standard  
17 score, you usually do get a one-step raise.

18 Q. Okay. But the fact that you  
19 didn't get a one-step raise had nothing to  
20 do with you individually; is that right?

21 A. No, it didn't.

22 Q. Okay. And you're not --

23 A. Or them, because the agency



**FREEDOM COURT REPORTING**

Page 157

1 was freezing all --

2 Q. All raises?

3 A. Uh-huh.

4 Q. Okay. Do you recall that  
5 seven of the nine ratings on your evaluation  
6 were meets standards?

7 A. Not right offhand.

8 Q. Do you recall which ones --  
9 Were you dissatisfied with any of the  
10 individual ratings?

11 A. I believe it was one in  
12 particular that I wasn't satisfied with.

13 Q. And what was that one?

14 A. It was the one where it says  
15 that I had transcribed, and something else  
16 with it. I was not satisfied with that  
17 particular one, I believe. I don't  
18 remember.

19 Q. You don't remember why you  
20 weren't happy about it?

21 A. I do remember why I was  
22 unhappy about it. I was just saying I don't  
23 remember any other ones.

**FREEDOM COURT REPORTING**

Page 158

1 Q. Okay. Well, why were you  
2 unhappy about that one?

3 A. Well, because when I was  
4 interviewed for the job I explained to  
5 Ms. Finch, Ms. Finch interviewed me, not  
6 Ms. Lackey, Ms. Finch interviewed me, and  
7 Dr. Searcy, and I especially told them that  
8 I could not transcribe. I had not done any  
9 transcribing, or had I done any work on that  
10 line.

11 Q. But did you understand it was  
12 part of your job responsibilities?

13 A. She told me that it would not  
14 be.

15 Q. Oh, she specifically told  
16 you --

17 A. She specifically told me that  
18 I would not have to transcribe.

19 Q. Okay. So, then you were  
20 dissatisfied when you were evaluated on that  
21 skill?

22 A. Yeah. Because when I sit down  
23 to talk with them about it, that was one of

**FREEDOM COURT REPORTING**

Page 159

1 the first things that I had noticed that  
2 they had listed on there. When I had told  
3 her -- I had, in fact, told her that I could  
4 -- that I had not done any. I did tell her  
5 that I was willing to learn to do it. Since  
6 I could type, I did tell her that I was  
7 willing to learn to transcribe.

8 Q. Okay. Well --

9 A. But I had not done it.

10 Q. Okay. Getting back on track,  
11 you're telling me what the discrimination in  
12 your performance appraisals were with  
13 Ms. Linda Lackey and Ms. Mary Finch,  
14 although you can't remember the date, is  
15 that right, about evaluation, or that  
16 appraisal?

17 A. I don't remember the date of  
18 the evaluation.

19 Q. Do you?

20 A. Well, that particular date, I  
21 believe it was dated June 30th, if I'm not  
22 mistaken.

23 Q. Of what year?

**FREEDOM COURT REPORTING**

Page 160

1 A. '03.

2 Q. Okay. So, we're talking about  
3 the June evaluation, with Ms. Linda Lackey  
4 and Ms. Mary Finch. And you told me that  
5 you recalled there was one thing on the  
6 evaluation that you were unhappy with, and  
7 that involved transcribing?

8 A. Uh-huh.

9 Q. And that you were also unhappy  
10 with -- I can't remember now if it was  
11 Ms. Finch or Ms. Lackey, not knowing the  
12 rule that she should have --

13 A. Ms. Lackey.

14 Q. Ms. Lackey not knowing the  
15 rule that she should have consulted with  
16 your other supervisor, your previous  
17 supervisor, Mr. Shelnut. But then you went  
18 on to testify that she did consult with him  
19 after you called it to her attention and he  
20 participated in the evaluation.

21 A. Yes.

22 Q. Is there anything else that  
23 constituted discrimination in that

**FREEDOM COURT REPORTING**

Page 161

1 performance appraisal?

2 A. Well, the discrimination came  
3 in that I don't think any other employee had  
4 to go through that. There were other  
5 employees who were there besides myself,  
6 white employees, who did not have to go  
7 through that.

8 Q. Go through what?

9 A. Go through the procedure that  
10 I had to go through with her to explain to  
11 her about my evaluation.

12 Q. So, you have a problem --

13 A. They did not grade -- They did  
14 not grade white employees on the same terms  
15 that they graded me on.

16 Q. Well, how did they grade white  
17 employees?

18 A. Well, to my knowledge, nobody  
19 was given any -- nobody was given any --  
20 nobody was given any -- any reason to be  
21 upset by -- about the evaluations.

22 Q. Did you see their evaluations,  
23 Ms. Coley?

**FREEDOM COURT REPORTING**

Page 162

1 A. Of course not.

2 Q. So, how do you know what was  
3 in them?

4 A. I don't know what was in them.

5 Q. Did you participate in those  
6 meetings with those employees and their  
7 supervisors?

8 A. I wouldn't have any reason to.

9 Q. Well, then, how do you know  
10 what happened?

11 A. Well, because nobody else  
12 complained. I was -- Nobody else said  
13 anything about their evaluation.

14 Q. You mean nobody else said  
15 anything to you?

16 A. To me, that's right.

17 Q. Does that mean nobody else was  
18 dissatisfied?

19 A. I don't know.

20 Q. It just means you don't know;  
21 is that right?

22 A. That's right.

23 Q. Okay.

**FREEDOM COURT REPORTING**

Page 163

1           A.       But I don't think that they  
2       were graded in the same manner that I was.

3           Q.       Well, why don't you tell --  
4       But you don't know that. You just said you  
5       didn't see their performance appraisals,  
6       isn't that right?

7           A.       No -- Yeah. That's right. I  
8       didn't see their performance appraisals.

9           Q.       So, then, you don't know what  
10      they said?

11          A.       No, I don't.

12          Q.       Okay. Well, what employees  
13      are we talking about that you think were  
14      graded more fairly than you were?

15          A.       There were white employees in  
16      the same section that were graded -- I'm  
17      sure they were graded. And if you check the  
18      records, I'm sure you could find out.

19          Q.       Well, tell me their names,  
20      Ms. Coley.

21          A.       Robin Rawls.

22          Q.       Ms. Rawls was not a ASA --  
23      Were you an ASA II or III at this time?

**FREEDOM COURT REPORTING**

Page 164

1           A.       It doesn't matter about  
2 position they was. It just matters as to  
3 whether they were graded differently from  
4 me. I'm not talking about what positions,  
5 or what position they held.

6           Q.       We're talking about what I say  
7 we're talking about today, because I'm the  
8 one deposing you. And if you want to depose  
9 somebody at Medicaid and ask questions and  
10 decide what's going to be asked, you  
11 certainly have the right to do that, and we  
12 expect you to do that. But I get to ask you  
13 about their names and their job titles and  
14 all that. I'm not trying to be  
15 argumentative.

16          A.       Okay. Another name is Pam  
17 Owens.

18          Q.       Okay. Back to Ms. Rawls for a  
19 minute.

20          A.       Uh-huh.

21          Q.       Back to this time period for a  
22 minute, when you got this performance  
23 appraisal from Lackey and Finch, were you an



**FREEDOM COURT REPORTING**

Page 165

1 ASA III at the time?

2 A. No, I was not.

3 Q. You were an ASA II?

4 A. Yes.

5 Q. Okay. What position did

6 Ms. Rawls hold at the time?

7 A. She was a supervisor. I'm not  
8 sure what her --

9 Q. But she was not an ASA II or  
10 III, or anything else?

11 A. No.

12 Q. What about Pam Owens?

13 A. Pam Owens was, I believe,  
14 working in the capacity of a nurse.

15 Q. Okay. So, she was not an  
16 ASA II either?

17 A. No.

18 Q. And she wasn't even evaluated  
19 on the same characteristics as you were, or  
20 shouldn't have been, should she?

21 A. No, she wasn't.

22 Q. What about Ms. Rawls?

23 A. No. The job duties were

**FREEDOM COURT REPORTING**

Page 166

1 different.

2 Q. Okay. Who else? Do you  
3 remember anybody else?

4 A. Oh, I'm sorry. Jean Stone.

5 Q. Female?

6 A. Female.

7 Q. Okay. And what was  
8 Ms. Stone's position?

9 A. She was a nurse.

10 Q. Okay. So, she also was not an  
11 ASA?

12 A. No.

13 Q. And would not have been graded  
14 on the same things that you were graded?

15 A. No. Not the same duties.

16 Q. Okay. Anybody else?

17 A. There were no other ASAs. I  
18 was the only one.

19 Q. Okay. But is there anybody  
20 else that you're talking about here that  
21 you're trying to compare yourself to?

22 A. Myron Uptain.

23 Q. What was Myron Uptain's

**FREEDOM COURT REPORTING**

Page 167

1 position?

2 A. I'm not sure.

3 Q. Do you know if Myron Uptain  
4 was an ASA II?

5 A. He was not.

6 Q. Okay. So, then, is it safe to  
7 assume that he would not have been graded on  
8 the same things that you were graded on as  
9 an ASA II?

10 A. He wouldn't have been graded.

11 Q. Okay. Anybody else besides  
12 those four people?

13 A. There is another lady's name,  
14 but I don't remember what her name is.

15 Q. Do you remember what her title  
16 was?

17 A. I don't.

18 Q. Do you remember if she was an  
19 ASA?

20 A. I don't think she was. She  
21 worked with Myron Uptain.

22 Q. Okay. So, then, she also  
23 would not have been graded on the same

**FREEDOM COURT REPORTING**

Page 168

1 things you would have been graded on?

2 A. No.

3 Q. Okay. So, is that everything  
4 that constitutes discrimination in  
5 performance appraisals with Linda Lackey and  
6 Mary Finch?

7 A. I may have some more that I  
8 can add later. I don't remember right now.

9 Q. Well, now is the time. That's  
10 why we're here, Ms. Coley, so that you can  
11 tell me the basis of your lawsuit. So if  
12 you need a moment to think about it, you're  
13 free to take it.

14 A. Okay.

15 Q. So, is your answer no, right  
16 now, that you don't know of any other  
17 discrimination in performance appraisals?

18 A. No. Right now -- No, for  
19 right now.

20 Q. Next you say that:  
21 Discrimination in performance appraisals  
22 cost you promotional and advancement  
23 opportunities. Just talking about the Linda

**FREEDOM COURT REPORTING**

Page 169

1 Lackey and Mary Finch performance appraisal,  
2 tell me which promotional and advancement  
3 opportunities you were denied as a result of  
4 their appraisal.

5 A. Well, it was the attachment  
6 that they attached to my appraisal.

7 Q. Okay.

8 A. That was in my file. When I  
9 -- I did take the exam and got on the  
10 register for the ASA III position.  
11 Although, in my opinion, the attachment they  
12 attached to my evaluation was mostly  
13 instructional, it gave the appearance of my  
14 being a problem employee.

15 Q. Were you?

16 A. Well, I don't think I was.

17 Q. Do you know if other people  
18 thought you were?

19 A. I don't know what -- I can't  
20 speak for other people. Nobody told me that  
21 they thought I was.

22 Q. Okay. So, you said that it  
23 was the attachment to the appraisal that

**FREEDOM COURT REPORTING**

Page 170

1 cost you promotional and advancement  
2 opportunities. What promotional and  
3 advancement opportunities are we talking  
4 about?

5 A. Ms. Carter, I was passed over  
6 thirty-two times as a result of the  
7 attachment attached to my file in personnel.  
8 Prior to that, I was able to be promoted and  
9 move around or seek another job, as other  
10 employees are able to do if they so desire.

11 Q. Okay.

12 A. Once that attachment was  
13 placed in my file, it stopped.

14 Q. Okay. Thirty-two times?

15 A. Thirty-two times.

16 Q. Were you qualified for the  
17 positions that you applied for?

18 A. Well, the exam said I was.

19 Q. Okay. Let's start at the  
20 beginning. What was the first one in this  
21 line of thirty-two times you applied for  
22 things?

23 A. They were different State

**FREEDOM COURT REPORTING**

Page 171

1 departments. I would have to go back and  
2 try to gather them up for you. I don't have  
3 those.

4 Q. Well, you know, you filed a  
5 lawsuit against Medicaid. And you said in  
6 the very first page of your complaint that  
7 you're complaining about being denied  
8 promotional and advancement opportunities.  
9 And what you're telling me right now is that  
10 you're not prepared to talk about that at  
11 your deposition; is that right?

12 A. I can talk about it. I can  
13 talk about it.

14 Q. You just said you don't have  
15 the dates, you don't know what the  
16 thirty-two things were.

17 A. I don't have the dates. I can  
18 give you some of the agencies' names that I  
19 was passed over.

20 Q. Well, why don't you give me  
21 what you know.

22 A. Okay. I was passed over by  
23 Mental Health, Transportation, the

**FREEDOM COURT REPORTING**

Page 172

1 Department of ADECA, Insurance Board. And a  
2 couple of those agencies I was passed over a  
3 couple of times, more than one time, because  
4 I came up on the register, my name came up  
5 on the register and I was interviewed for.

6 Q. Okay. Let's talk about the  
7 ones that you remember. That's one, two,  
8 three, four that could have been multiple  
9 times you said. Let's talk about Mental  
10 Health. Do you know when you put your name  
11 on the register for Mental Health?

12 A. I think my name got on the  
13 register approximately around September  
14 2003.

15 Q. Okay. And let me just get  
16 this straight so I understand that and so  
17 the Record is clear. You put your name on  
18 the register for an ASA III position?

19 A. Well, I didn't put it on  
20 there. My name got on there. I took the  
21 exam.

22 Q. But the purpose of taking the  
23 exam was to get on the register?



**FREEDOM COURT REPORTING**

Page 173

1           A.       Was to get on the register,  
2       yes.

3           Q.       Okay. So, you took the exam  
4       for ASA III? What do you need?

5           A.       I left my water in the car.

6           Q.       We'll get you some water. You  
7       put your name on the register?

8           A.       Yeah. I took the exam and my  
9       name came up on the register.

10          Q.       Okay. And so it wasn't a  
11       matter of applying for a specific job at  
12       Mental Health, your name went on the  
13       register, and Mental Health just happened to  
14       be the next one with an ASA-III opening, is  
15       that how it works?

16          A.       Right. That's how it works.

17          Q.       Okay. So, Mental Health,  
18       then. Do you recall the timing of being  
19       contacted about your name being on the  
20       register for Mental Health?

21          A.       No, ma'am.

22          Q.       Okay. But you were not  
23       hired --

**FREEDOM COURT REPORTING**

Page 174

1           A.       It was not after September  
2       2003.   It was after I got on the register,  
3       yeah.

4           Q.       How did you learn you were not  
5       hired?

6           A.       Sometimes they would send you  
7       a letter to let you know, and others would  
8       call to let you know that you weren't hired.

9           Q.       Okay.   Do you recall if it was  
10      a letter or if you were called?

11          A.       No.

12          Q.       Do you have a file or anything  
13      with these documents in it?

14          A.       No, ma'am, I don't.

15          Q.       Okay.   And you don't have any,  
16      obviously?

17          A.       Some of the documents that I  
18      had, like I told you, were destroyed.   So I  
19      had some of them, but I don't now.

20          Q.       Okay.   But you no longer have  
21      these?

22          A.       I may have one or two.

23          Q.       But you haven't produced them;

**FREEDOM COURT REPORTING**

Page 176

1 I don't have a problem with you asking the  
2 Judge to depose me again, I'm just  
3 explaining to you why I didn't.

4 Q. That's fine, Ms. Coley. I  
5 don't need your explanation. We're going to  
6 talk about your production request in a few  
7 minutes. I'm going to ask you about your  
8 efforts to find the documents that I asked  
9 for.

10 And going back to Mental  
11 Health, do you recall how you learned that  
12 you were not hired as an ASA III with Mental  
13 Health?

14 A. I don't remember if they  
15 called or sent me a letter.

16 Q. But in any event, you were not  
17 hired as an ASA III?

18 A. I was not.

19 Q. Do you know who was hired?

20 A. I don't.

21 Q. So, you don't know if that  
22 person was white or black or more qualified?

23 A. No, I don't.

**FREEDOM COURT REPORTING**

Page 179

1 contact them about why you weren't hired?

2 A. Huh-uh.

3 Q. Do you know for a fact the  
4 reason that you were not hired by Mental  
5 Health?

6 A. I believe that if I

7 Q. Not what you believe, but what  
8 you know.

9 A. Either it was a letter or  
10 phone call that I received. It was because  
11 of the information that was found in my  
12 file.

13 Q. So, you actually received  
14 either a letter from Mental Health or  
15 somebody called you from Mental Health and  
16 said: We didn't hire you because of what's  
17 in your personnel file?

18 A. That's correct.

19 Q. Did you take any action after  
20 that?

21 A. I did not.

22 Q. Why not?

23 A. Towards Mental Health?

**FREEDOM COURT REPORTING**

Page 180

1 Q. Towards anybody.

2 A. No.

3 Q. Okay. But you said you did  
4 with regard to DOT; is that right?

5 A. I did. Because I think -- I  
6 did talk I did reply to DOT because  
7 that's where it was initiated, the letter  
8 for the passovers.

9 Q. Could you tell me that again.  
10 I'm not sure I understand you.

11 A. Well, the person that -- The  
12 first -- When I first learned that I had  
13 been -- I had been passed over before I  
14 found out about it sometimes -- a couple of  
15 times, I found out later on.

16 But, Mr. Brown, Jeffrey Brown,  
17 is the person who initiated the letter for  
18 the passover that I received from personnel  
19 through Transportation.

20 Q. Do you have that letter?

21 A. No. I believe it was  
22 destroyed. I can try to get a copy.

23 Q. And do you recall what

**FREEDOM COURT REPORTING**

Page 181

1 Mr. Brown's letter said?

2 A. Well, actually, it was asking  
3 personnel to pass over me because of when we  
4 discussed with Ms. Crosskno, it was  
5 involving the incident with her.

6 Q. Oh, so, it's way back to DOT?

7 A. Yeah. It goes back to that.

8 Q. Well, let me ask you what that  
9 has to do with Medicaid?

10 A. Well, the incident -- The  
11 information was -- Mr. Brown saw my  
12 information in my folder that Medicaid had  
13 put in there.

14 Q. Okay. But --

15 A. And what he did was he got  
16 that information and the information from  
17 Transportation, and that's what he used to  
18 ask for the passover.

19 Q. And did he say that, that he  
20 made his decision based on the information  
21 from Medicaid and based on the information  
22 from DOT?

23 A. Yes.

**FREEDOM COURT REPORTING**

Page 182

1 Q. He did?

2 A. Yes.

3 Q. Okay. Did he specify that it  
4 was the attachment to the performance  
5 appraisal or your meets-standards grade? Or  
6 did he specify what it was about your  
7 performance appraisal or what was in  
8 Medicaid's file that caused him to make his  
9 decision?

10 A. Well, if I'm remembering  
11 correctly, he said that he thought that I  
12 would not be able to perform the duties of  
13 the job.

14 Q. Based on your personnel file?

15 A. Based on the information he  
16 found in my personnel file.

17 Q. Okay. So, how do you know,  
18 then, that it was the attachment?

19 A. Because, see, he said that.  
20 He said that based on the information he  
21 found in my personnel file.

22 Q. But couldn't it be other  
23 information?

**FREEDOM COURT REPORTING**

Page 183

1           A.       Well, there was nothing else  
2 too much derogatory, besides the information  
3 that he found for -- that Ms. Crosskno filed  
4 in my personnel file. That would have been  
5 the only thing -- That was the only thing  
6 that I was told that he had access to.

7           Q.       Speaking of what he has access  
8 to, when you take an exam to get put on the  
9 register, do you know what the procedure is  
10 for obtaining your personnel file?

11          A.       The procedure for me obtaining  
12 my personnel file?

13          Q.       No. Not for you. But the  
14 person that you want to go to work for. For  
15 example, in the instance of Mental Health,  
16 you've taken the test, you've been put on  
17 the register, they need an ASA III, so  
18 you're already a State employee and have a  
19 personnel file. Do you believe they're  
20 entitled to see that file?

21          A.       Yes, they're entitled to it,  
22 I've been told.

23          Q.       Okay. Do you have a problem



**FREEDOM COURT REPORTING**

Page 184

1 with that?

2 A. No. But there are procedures  
3 you have to go through.

4 Q. And you want them to follow  
5 those procedures, I'm sure?

6 A. Uh-huh.

7 Q. But do you know what they are?

8 A. Yes, I do.

9 Q. Okay. What are they?

10 A. Well, they can go and view my  
11 -- but they should have a formal request  
12 from one department to the other, to view  
13 your files, to review a person's records.

14 Q. So, you think that they have a  
15 right to get the files from one department  
16 to another?

17 A. Well, I think that they  
18 probably should have gone to personnel and  
19 got permission from personnel.

20 Q. Okay. Do you have any reason  
21 to believe that procedure wasn't followed?

22 A. Yes, I do.

23 Q. And what is that?

**FREEDOM COURT REPORTING**

Page 185

1           A.       Well, because he -- See,  
2       certain -- There are certain records that go  
3       in your State personnel records, and there  
4       are certain records that go in -- like if  
5       you have an office. Like, Transportation  
6       has their own personnel department.

7                    If you give me instructions, I  
8       don't think that those instructions should  
9       be placed in my personnel file. I think  
10      that it's a matter of my performance and my  
11      grade.

12           Q.       Let me ask you this,  
13      Ms. Coley.

14           A.       You don't need instructions in  
15      my personnel file.

16           Q.       But that's your opinion;  
17      right?

18           A.       But it should not be. They  
19      don't do that. The agencies don't do that.  
20      That's not part of the procedures.

21           Q.       How do you know that?

22           A.       I read it in the handbook.

23           Q.       Okay. So, that came from the

**FREEDOM COURT REPORTING**

Page 186

1 handbook, too?

2 A. Yeah.

3 Q. The handbook that you haven't  
4 provided?

5 A. That I don't have.

6 Q. Okay. But you're claiming  
7 that the handbook says that you can't put  
8 extra stuff in the personnel file?

9 A. There are State personnel  
10 rules and laws --

11 Q. Oh, yes, I know.

12 A. -- that says that certain  
13 things should go in a person's personnel  
14 records or not.

15 Q. Are you also saying that there  
16 are prohibitions against other things going  
17 in the personnel file?

18 A. But why would you put  
19 instructions in my personnel file? The  
20 purpose of that is for job performances.  
21 What you need to know is how I perform on my  
22 job. I don't have a problem with them  
23 putting the score of my performance in

**FREEDOM COURT REPORTING**

Page 187

1 there. I had a problem with them putting  
2 derogatory things in my file, because that  
3 could ruin my career.

4 Q. So, you're just not happy with  
5 them adding anything other than the  
6 performance appraisals to your personnel  
7 file?

8 A. That's all that needs to be in  
9 there.

10 Q. In your opinion?

11 A. Well, that -- I think the  
12 rules may say that.

13 Q. But you can't tell me what  
14 rule?

15 A. I can't.

16 Q. Okay. So, back to DOT. You  
17 said that when you were not hired on several  
18 occasions for the ASA III job, that you did  
19 take action?

20 A. Yes, I did. I wrote -- I  
21 wrote some letters to Mr. Brown and to the  
22 Transportation director.

23 Q. And what did those letters

**FREEDOM COURT REPORTING**

Page 188

1 say?

2 A. That was just explaining to  
3 them the procedure that he -- he used. And  
4 as Mr. Brown, and Mr. Brown was my class  
5 representative for the Consent Decree.  
6 There was a law in place called the No  
7 Bypass Rule --

8 Q. Yes.

9 A. -- that was not adhered to in  
10 that particular situation.

11 Q. So, did you file a grievance?

12 A. At that particular time?

13 Q. Uh-huh.

14 A. No. My grievance was already  
15 filed, Ms. Carter.

16 Q. But it didn't relate to this,  
17 it related to something else.

18 A. Yes, it did. It related to  
19 the information that he got out my file in  
20 Ms. Crosskno's office.

21 Q. But you're saying that after  
22 time you were passed over for another job --  
23 I mean, maybe I'm getting the chronology

**FREEDOM COURT REPORTING**

Page 191

1 A. Yeah. He said it did.

2 Q. Okay. In his letter?

3 A. Uh-huh.

4 Q. Okay. Did you contact  
5 Medicaid about that, then?

6 A. No, I didn't.

7 Q. Why not?

8 A. Well, I -- because -- Well, I  
9 mentioned to Medicaid, in some of my letters  
10 that I wrote to the commissioner.

11 Q. Okay.

12 A. That I was passed over by  
13 Transportation. Because I knew at the time  
14 that transportation -- he -- Mr. Brown from  
15 Transportation had gotten the information  
16 out of my personnel file.

17 Q. Okay. ADECA, you said before  
18 that they were the -- one of the thirty-two  
19 that passed you over; is that right?

20 A. Yes.

21 Q. Okay. How do you know what  
22 the basis of their decision was not to hire  
23 you?

**FREEDOM COURT REPORTING**

Page 192

1           A.       There was a letter sent to me.

2           Q.       So, you had a letter on that  
3 one, too?

4           A.       Uh-huh.

5           Q.       Do you have a copy of that  
6 one?

7           A.       Not presently.

8           Q.       And did it specifically  
9 mention your file from Medicaid and the  
10 attachment to your performance appraisal?

11          A.       Information filed in my  
12 personnel file.

13          Q.       Okay. Information found in  
14 your personnel file, but it did not  
15 specifically say it was the performance  
16 appraisal or specifically say it was the  
17 attachment to the performance appraisal; is  
18 that true?

19          A.       It did not, that I can  
20 remember, say that.

21          Q.       Okay. And the same was true  
22 with DOT; is that right?

23          A.       Well, DOT was more specific.

**FREEDOM COURT REPORTING**

Page 193

1 Q. Oh, and it did mention the  
2 performance appraisal and the attachment?

3 A. Yes, yes.

4 Q. Okay. The Insurance Board,  
5 are they one of the thirty-two?

6 A. Yes, ma'am.

7 Q. Okay. And you were not hired  
8 as an ASA III there either; is that right?

9 A. Right. I think there were,  
10 like, a couple of interviews there, also, if  
11 I'm not mistaken. There were at least two,  
12 I know, at the Insurance Board.

13 Q. You mean you applied two  
14 different times?

15 A. I didn't apply, my name came  
16 up on the register and they sent me letters  
17 for an interview.

18 Q. Okay. And regarding the first  
19 time, do you recall how you learned you were  
20 not hired?

21 A. They sent me letters. They  
22 all sent letters, or I got a phone call.

23 Q. Well, do you remember if it



**FREEDOM COURT REPORTING**

Page 194

1 was a letter or a phone call?

2 A. I believe I got a letter from  
3 the Insurance Board, and a phone call.

4 Q. And did they tell you why?

5 A. Because I had to communicate  
6 with the interviewee -- people interviewing  
7 me.

8 Q. Okay. Did they tell you why  
9 you weren't hired?

10 A. Information found in my file.

11 Q. Okay. But they were not  
12 specific?

13 A. They were not as specific as  
14 Transportation.

15 Q. Okay.

16 A. None of the others was as  
17 specific as Transportation.

18 Q. Okay. Can you remember any  
19 more?

20 A. I interviewed at Medicaid for  
21 an ASA III position.

22 Q. Oh, so there was one at  
23 Medicaid, too. And you were passed over for

**FREEDOM COURT REPORTING**

Page 195

1     that one as well?

2             A.       Someone else was selected.

3             Q.       Okay. Which means you were  
4     passed over, is that right, or is that  
5     different?

6             A.       I wouldn't call it a passover.  
7     I think they just selected someone else.

8             Q.       Well, in these other cases,  
9     did they not select someone else?

10            A.       Well, they were asking for the  
11    passover.

12            Q.       Okay. But with Medicaid, they  
13    didn't ask for a passover, they just  
14    selected another candidate?

15            A.       Exactly.

16            Q.       Okay. So, then, you didn't  
17    receive anything from them about them basing  
18    their decision on the performance appraisal  
19    or the attachment?

20            A.       Well, I was in-house, so I may  
21    have received a phone call or something.

22            Q.       Okay. But I guess what I'm  
23    getting at, Ms. Coley, is this is different

**FREEDOM COURT REPORTING**

Page 196

1 from the others where you say their decision  
2 was based on the performance appraisal, or  
3 the attachment to it; is that right?

4 A. I believe that one was.

5 Q. Okay. So, Medicaid is an  
6 exception there; is that right?

7 A. (Witness nods head in the  
8 affirmative.)

9 Q. You need to say it out loud.

10 A. Someone else was selected.

11 Q. Have you told me about all of  
12 the promotional and advancement

13 opportunities that you believe you were  
14 denied because of the discrimination and --

15 A. Well, I think we've discussed  
16 the situation as to the extent of the  
17 information I can give you on it right now.

18 Q. Okay. You say: Defendant  
19 placed negative information in my personnel  
20 file as well. Have you already told me  
21 about that?

22 A. The negative information is  
23 the attachment to the evaluation.

**FREEDOM COURT REPORTING**

Page 197

1 Q. And you don't have a copy of  
2 that?

3 A. No.

4 Q. Okay. Do you recall what part  
5 of the attachment to the evaluation you were  
6 unhappy with?

7 A. Well, as I said previously,  
8 the attachment in itself is mostly  
9 instructional, but it gives the appearance  
10 of my being a problem employee.

11 Q. Well --

12 A. Say, for instance, if you're  
13 looking for an employee, you go and look at  
14 their personnel file, the first thing when  
15 you open up, you're going to see these three  
16 or four pages attached to an evaluation that  
17 says: Meets standards.

18 Q. Uh-huh.

19 A. But then you look and you see  
20 all these instructions, and it looks -- you  
21 know, it's going to give a negative  
22 appearance.

23 Q. You're of the opinion that it

**FREEDOM COURT REPORTING**

Page 206

1 letter from personnel about Mr. Brown's  
2 letter?

3 A. Yes, I did.

4 Q. And do you have that response?

5 A. I don't.

6 Q. Okay. Do you remember what  
7 you said about the information from  
8 Medicaid's file?

9 A. I think I referred them to the  
10 no-bypass law, and I explained to them the  
11 situation that I just explained to you about  
12 Ms. Crosskno, and my grievance not being  
13 heard. Because I felt like he, Mr. Brown,  
14 himself, which is not anything to do with  
15 Medicaid, had used some information that was  
16 unfounded. And it was just allegations  
17 because it had not been proven.

18 Q. But that had nothing to do  
19 with Medicaid, though, you said?

20 A. No.

21 Q. Okay. All right. Well,  
22 that's fine. Was there anything else about  
23 the attachment that you were unhappy with?

**FREEDOM COURT REPORTING**

Page 211

1                                   was held.)

2                   Q.       Okay. So back to paragraph  
3 four, you said: Discrimination in  
4 performance appraisals, plural. So there's  
5 a different one besides the June '03 one  
6 with Linda Lackey and Mary Finch; right?

7                   A.       There is.

8                   Q.       Okay. What's the next one?

9                   A.       It's the one with Mr. Mike  
10 Murphy.

11                  Q.       Okay. When was that?

12                  A.       I believe it was done in July.

13                  Q.       Is that part of your  
14 production response?

15                  A.       This is -- You have copies of  
16 what I have over here.

17                               (Defendant's Exhibit 3 was  
18 marked for identification  
19 purposes.)

20                  Q.       Okay. Let me go ahead and  
21 mark -- We started doing this before,  
22 marking -- Ms. Coley, we marked first,  
23 Defendant's Exhibit 2, which is Defendant's

**FREEDOM COURT REPORTING**

Page 220

1 document what you say constitutes  
2 discrimination?

3 A. Well, I can show you what I  
4 had a problem with here because this -- If  
5 you go from 11/3/03 to the time of the  
6 evaluation, go to -- if you look at this  
7 page (indicating).

8 Q. Uh-huh. What does that say?

9 A. From '03 to 5/13/04.

10 Q. Uh-huh.

11 A. November '03 to 5/13/04, I had  
12 been through several offices then. Remember  
13 we discussed how the offices changed in and  
14 out?

15 Q. Uh-huh. So, is the timing of  
16 this one of your complaints?

17 A. It is the timing of the  
18 evaluation. Also, the entry on Corrective  
19 Action Plan, which they titled for the  
20 attachment, was carried over to my new job.

21 Q. Are you aware of any rule that  
22 prohibits that?

23 A. Well, if you go to a new job,

**FREEDOM COURT REPORTING**

Page 223

1 Q. Well, do you think by virtue  
2 of it being attached to this interim  
3 appraisal that it was still an issue?

4 A. I think it was brought back in  
5 to be an issue.

6 Q. Uh-huh. And you're unhappy  
7 with that?

8 A. Yes, I am.

9 Q. Okay. Anything else with  
10 regard to attachment one?

11 A. I think that this attachment  
12 to the appraisal, the Corrective Action  
13 Plan, was brought back around because it was  
14 still an issue with the department because I  
15 had complained of Ms. Rawls attacking me. I  
16 had complained of that. I think that this  
17 was maliciously done to sabotage my career.

18 Q. Okay. So, you think that  
19 right here on the second page of the  
20 performance appraisal where it says:  
21 Describe areas of employee's performance  
22 that need improvement as observed during the  
23 first nine months of appraisal period, see



**FREEDOM COURT REPORTING**

Page 224

1 attachment one, you think they put  
2 attachment one in here because of --

3 A. Actually, Ms. Carter --

4 Q. Let me finish my sentence.

5 A. I'm sorry, excuse me.

6 Q. -- in retaliation for you  
7 complaining about Ms. Rawls, you say,  
8 attacking you; is that right?

9 A. Ms. Rawls assaulted me.

10 Q. Or assaulting you?

11 A. Yes.

12 Q. And you think that's why this  
13 attachment one was put in there?

14 A. I think it was why they went  
15 back and got it, because prior to my  
16 preappraisals with Ms. Harvest -- See, I  
17 only received that preappraisal with her.  
18 She never discussed a Corrective Action Plan  
19 with me.

20 Q. Well, she signed this  
21 document, didn't she?

22 A. But, did you see the date she  
23 signed it.

**FREEDOM COURT REPORTING**

Page 227

1 Q. Well, and it looks to me like  
2 the attachment one is about right now. It's  
3 talking about what areas need improvement,  
4 based on your first nine months. So that  
5 would include her period of time --

6 A. It wouldn't be based on my  
7 first nine months, Ms. Carter.

8 Q. Well, that's what it says.

9 A. It is what it says. That's my  
10 point.

11 Q. I don't understand. You're  
12 just unhappy, that's the basis of it?

13 A. No. I'm unhappy is because it  
14 was not done according to procedure. It is  
15 incorrect.

16 O. So, your problems, again, with  
17 the procedure, or what you say the procedure  
18 is?

19 A. What my problem is, is that  
20 the method that they used to do it, and why  
21 they did it. They should not have done it  
22 this way. This is not procedure.

23 Q. How should they have done it?

**FREEDOM COURT REPORTING**

Page 228

1           A.       I should have had -- When I  
2       went to my new job, I should have had a  
3       preappraisal, I should have had a six-months  
4       appraisal, and I should have had a  
5       twelve-month.

6           Q.       And what rule says you're  
7       entitled to that, Ms. Coley?

8           A.       There are rules in the  
9       handbook.

10          Q.       Well, which ones are you  
11       talking about?

12          A.       Well, I am not able to give  
13       you that rule right now, but I will.

14          Q.       Today is the day I need it.

15          A.       Well, I think you can get it  
16       later, if you'll accept it.

17          Q.       Well, I'm going to object to  
18       anything you provide to me later.

19          A.       I'm sure.

20          Q.       Okay. So see attachment two,  
21       then. It says: After document of action  
22       plan that has been discussed to improve the  
23       areas of weakness, and it has a Corrective

**FREEDOM COURT REPORTING**

Page 229

1 Action Plan.

2 A. Yes, ma'am. See, this is  
3 attached -- This goes with the Corrective  
4 Action Plan. The nine-month interim goes  
5 with that.

6 Q. Well, I understand, Ms. Coley.

7 A. The Corrective Action Plan is  
8 the one and the same that Mary Finch and  
9 Linda Lackey -- it's the same document.

10 Q. Does that tell you these are  
11 things they still want you to work on?

12 A. No. What it tells me is tells  
13 me that they have come together to try to  
14 sabotage my career with State Medicaid.

15 Q. That's your belief; right?

16 A. Yes, it is.

17 Q. Let's just go ahead and look  
18 at the Corrective Action Plan. It says:  
19 Portions of the following Corrective Action  
20 Plan may look familiar to you because it  
21 addresses problems that were identified  
22 nearly a year ago and that continue to be  
23 evident.

**FREEDOM COURT REPORTING**

Page 230

1                   This action plan will make  
2 clear to you the expectations for improving  
3 weak performance and give you practical  
4 steps towards meeting those expectations.  
5 Working hours and use of leave, breaks and  
6 lunchtime. And then it goes on to give you  
7 some counseling about those areas; is that  
8 right?

9                   A.       Yes, ma'am, it does.

10                  Q.       And do you -- Did you  
11 understand that your work hours were  
12 seven-thirty to four-thirty?

13                  A.       Yes, ma'am.

14                  Q.       Did you have a problem with  
15 them telling you that if you found that you  
16 needed to change those hours, that you were  
17 to notify them and they'd change them if  
18 possible?

19                  A.       No, ma'am, I didn't have a  
20 problem with that.

21                  Q.       Did you have a problem with  
22 them telling you that more than two late  
23 arrivals would result in additional

**FREEDOM COURT REPORTING**

Page 231

1       corrective actions?

2               A.       I did.

3               Q.       You did?

4               A.       Yes, I did.

5               Q.       And why is that?

6               A.       Because I     I'm not the only  
7       one that comes -- I mean, where does it say  
8       that --

9               Q.       Well, apparently your boss has  
10       said this.

11              A.       Well, my boss has to follow  
12       procedures, though. The State have  
13       guidelines that they need to go by,  
14       Ms. Carter.

15              Q.       Ms. Coley, I'm aware of that.

16              A.       There's nowhere written that  
17       says that two tardies will constitute a  
18       corrective action.

19              Q.       Well, are you telling me,  
20       then, that your boss doesn't have any  
21       discretion whatsoever to give you guidance?

22              A.       He does. He sure does. He  
23       does have, and he should have had. But,

**FREEDOM COURT REPORTING**

Page 232

1 also, when you're doing that, you do have to  
2 have guidelines that you have to follow.  
3 You don't put unreasonable stipulations on  
4 the employee.

5 Q. Ms. Coley, so you believe,  
6 then, that it's unreasonable for you to be  
7 counseled again with additional corrective  
8 actions if you're late more than two times,  
9 yes or no?

10 A. Well, Ms. Carter, I don't know  
11 of anybody who is going to come to work a  
12 whole year and not be late a couple of  
13 times.

14 Q. Well --

15 A. So I think that that was one  
16 of the things that he was discriminating  
17 against me. Because I know that there were  
18 employees working in that section with me  
19 who were often late.

20 Q. Okay. Tell me who they were.

21 A. Robin Rawls. Who took off  
22 work. And I know because I was keeping the  
23 time. I was the time secretary.

**FREEDOM COURT REPORTING**

Page 233

1 Q. Okay. And Ms. Robin Rawls --

2 A. She took off in the afternoons  
3 to go get her daughter. She never turned in  
4 her time.

5 Q. Ms. Robin Rawls was in the  
6 same position as you or not?

7 A. She was not in the same  
8 position.

9 Q. And she was, in fact, a  
10 supervisor, was she not?

11 A. She was not my supervisor.

12 Q. But she was a supervisor?

13 A. She was a supervisor.

14 Q. Okay. Who else?

15 A. But supervisors have to follow  
16 procedures, too.

17 Q. Well, that's your opinion?

18 A. That's State personnel rules.

19 Q. Which rule?

20 A. I don't have a number for it,  
21 but I can produce the rule.

22 Q. Ms. Coley, are you aware of a  
23 rule that says that supervisors and ASA I,



**FREEDOM COURT REPORTING**

Page 234

1 II and III all have to abide by the exact  
2 same rules for when they arrive at work?

3 A. Well, there is a rule that you  
4 do have to abide by the time that you come  
5 to work.

6 Q. And what rule is that?

7 A. I don't have the number for  
8 it.

9 Q. Okay. But in any event, this  
10 says: More than two late arrivals will  
11 result in additional corrective actions.  
12 And what you've told me here today is that  
13 you are unhappy with that because  
14 supervisors, like Robin Rawls, didn't have  
15 to follow that rule?

16 A. Well, I believe I was the only  
17 one that had to follow that rule.

18 Q. Tell me who else didn't have  
19 to follow that rule.

20 A. Nobody else in the department  
21 had to follow that rule because I kept the  
22 time and there were certainly ones who came  
23 in more than twice, after this was given to

**FREEDOM COURT REPORTING**

Page 235

1 me, who were not told the same thing that I  
2 was told.

3 Q. And was this given to you in  
4 response to being late before?

5 A. I have no idea.

6 Q. Well, were you late before?

7 A. Yes, I have been.

8 Q. Okay. Well, fine.

9 A. I think it was given in  
10 response to me because it came -- it's the  
11 same plan that was instituted by Ms. Linda  
12 Lackey and Mary Finch. It's one and the  
13 same.

14 Q. Well, let me ask you this.  
15 You said that you were the timekeeper, so  
16 you know when everybody came and went.

17 A. I did the leave slips.

18 Q. Well, do you know for a fact  
19 whether people were reprimanded or not for  
20 being late?

21 A. Well, I would have known  
22 whether or not they would have.

23 Q. How would you have known?

**FREEDOM COURT REPORTING**

Page 236

1           A.           Because I would have had to  
2 produce leave slips for it.

3           Q.           Okay. And nobody asked you to  
4 ever produce that?

5           A.           Nobody ever asked me.

6           Q.           Okay. Did anybody ever ask  
7 for your leave slips?

8           A.           Yes.

9           Q.           Okay. Next it says: You're  
10 expected to take morning and afternoon  
11 breaks to last no longer than the allowed  
12 time established in the AIMS manual. Let me  
13 know when you are going on break and when  
14 you have returned. Do you have a problem  
15 with that request?

16          A.           I did have a problem with let  
17 me know when you're going and when you're  
18 returning because no one else had to do  
19 that.

20          Q.           And that's the reason for the  
21 problem, because you thought that you ought  
22 to have the exact same rules as everybody  
23 else; is that right? Yes or no?

**FREEDOM COURT REPORTING**

Page 237

1           A.       Well, I think that everybody  
2       should have to follow the same rules as far  
3       as when time guidelines come.

4           Q.       Well, let me ask you this,  
5       Ms. Coley. You didn't hold the same job as  
6       Robin Rawls that you're comparing yourself  
7       to; is that correct?

8           A.       I did not.

9           Q.       Okay. Does it make sense to  
10      you that your boss might need to have  
11      different rules for knowing when you're  
12      coming and going than Robin Rawls' boss?

13          A.       It doesn't matter. He needs  
14      to know when she goes and comes too.

15          Q.       Well, how do you know that?

16          A.       He does. Well, what if she  
17      just goes somewhere and he don't know where  
18      she is, or if she's coming in and he doesn't  
19      know what time she's coming in. I mean, he  
20      needs to know what time she's going to be  
21      there, or what time she's going to leave, he  
22      needs to know that, as well as he needs to  
23      know when I'm coming and going.

**FREEDOM COURT REPORTING**

Page 241

1 expected to call me as soon as you know  
2 you'll be out of the office on sick leave.  
3 Do you have a problem with that?

4 A. I don't.

5 Q. As much as possible, annual  
6 leave should only be taken when a leave  
7 request has been approved in advance of the  
8 leave being taken.

9 A. I don't have a problem with  
10 that.

11 Q. Next is following  
12 instructions: There have been occasions  
13 when you did not follow the instructions  
14 given to you resulting in task not being  
15 completed correctly or in a timely manner.  
16 Do you have a problem with that?

17 A. I do. Because I was never  
18 told what tasks that were not completed in a  
19 timely manner or correctly.

20 Q. And you're not aware of any on  
21 your own?

22 A. I'm not aware of any.

23 Q. Okay. In order to avoid that

**FREEDOM COURT REPORTING**

Page 244

1           A.       I said she was not supposed to  
2 assign me any work. She had been given  
3 instructions not to.

4           Q.       But she did anyway, you're  
5 telling me?

6           A.       She tried to.

7           Q.       And what did you do?

8           A.       I went to Mr. Murphy.

9           Q.       Did you take care of it?

10          A.       He took care of it.

11          Q.       Okay. So, then, that  
12 sentence: At any time you don't understand  
13 what you're to do, you're to contact me or  
14 the person that assigned it to you so that  
15 we can verify what needs to be done. You  
16 were okay with that and able to handle that  
17 by going around Robin Rawls; is that right?

18          A.       Yes.

19          Q.       Okay. If tasks and  
20 assignments are not completed according to  
21 instructions, this will be reflected on your  
22 annual evaluation and result in additional  
23 corrective actions. Fair enough?

**FREEDOM COURT REPORTING**

Page 245

1 A. Yes.

2 Q. Number three: Performance and  
3 completion of assigned tasks, reviewing work  
4 before turning in to appropriate staff  
5 member. This says: Upon completion of  
6 tasks assigned to you, including, but not  
7 limited to, typing of administrative claims,  
8 review, letters and forms, you are expected  
9 to review your work to verify the task has  
10 indeed been completed accurately before  
11 submitting to the appropriate staff member.  
12 Any problem with that?

13 A. No.

14 Q. You are expected to carefully  
15 proof and correct your own mistakes so that  
16 the work is error free when turned in. Fair  
17 enough?

18 A. Yes.

19 Q. Rarely should a staff member  
20 need to return work to you for correction.  
21 Rarely should deadlines be missed unless  
22 there are very unusual circumstances or  
23 unless priorities have changed and your

**FREEDOM COURT REPORTING**

Page 246

1 supervisor is aware and approving of those  
2 changes. Do you agree with that?

3 A. Uh-huh. Yes.

4 Q. Okay. If you are ever unsure  
5 of the expectations surrounding an  
6 assignment or task, notify me so that we can  
7 get you the needed clarification. More than  
8 two instances of work being turned in with  
9 errors, and/or not on time, will result in  
10 additional corrective actions being taken,  
11 including a lowering of at least one rating  
12 on your annual evaluation. Any problem with  
13 that part?

14 A. I have a problem with that  
15 part.

16 Q. Okay. Tell me which sentence  
17 we're talking about.

18 A. I mean, if you're -- Well, my  
19 -- Part of my assignment was to type X  
20 amount of letters a day, sometimes thirty or  
21 forty.

22 Q. Uh huh.

23 A. There's -- I don't know of any



**FREEDOM COURT REPORTING**

Page 247

1 typist who could probably turn those letters  
2 in without no typographical errors, one or  
3 two. There could be some, but, you know, if  
4 you type that many letters per day, you may  
5 have, like, miss a period at the end of a  
6 sentence, or you may miss something.

7 Q. And you don't think that you  
8 should be expected to have no typos in your  
9 letters?

10 A. That's the purpose of on your  
11 Form 40 saying who will proofread your work  
12 or who will check your work before  
13 completed, that's the purpose of that.

14 Q. You didn't have anybody to  
15 check your work?

16 A. I believe there was somebody  
17 that checked it.

18 Q. Okay. So, then, is it  
19 unreasonable to expect your work to be error  
20 free when it's turned?

21 A. Yeah, it is sometimes. Not  
22 all the time. You know, you don't turn in  
23 -- You can't turn in error-free work all the

**FREEDOM COURT REPORTING**

Page 248

1 time. Nobody can. We're imperfect humans.

2 Q. Well, I agree with you on  
3 that, Ms. Coley.

4 A. I think that's an unreasonable  
5 statement.

6 Q. Do you?

7 A. I do.

8 Q. So, you just think it's unfair  
9 to require --

10 A. That part, that part, that  
11 part.

12 Q. Okay. Do you recall what your  
13 score was for proofreading and -- Do you  
14 recall that you were rated on typing and  
15 proofreading documents?

16 A. What document are you looking  
17 at, the evaluation?

18 Q. It was your performance  
19 appraisal.

20 A. Yes.

21 Q. Did you disagree with the  
22 score?

23 A. I did disagree with that

**FREEDOM COURT REPORTING**

Page 253

1 Friday, Thursday if we have a Friday  
2 holiday. Are you okay with that?

3 A. Yes. And the thing about it  
4 is, nobody else had to do a project list. I  
5 was the only one that was asked to do the  
6 project list and send it in.

7 Q. And you know that because you  
8 were paying attention to what everybody else  
9 was doing?

10 A. No. I know that because when  
11 I sent mine, there was no others sent.

12 Q. How do you know there were no  
13 others sent?

14 A. Because I asked a couple and  
15 they said they didn't have to do a project  
16 list.

17 Q. Okay. And do you think you  
18 had to do a project list because of your  
19 past performance, they wanted to keep up  
20 with what you were working on?

21 A. I think the project list was  
22 instituted from the attachment that Mary  
23 Finch and Linda Lackey did. I think he just

**FREEDOM COURT REPORTING**

Page 254

1 brought it down from them.

2 Q. Okay. Were you the only ASA  
3 III at the time?

4 A. At the time I was a II.

5 Q. A II. Were you the only ASA  
6 II at the time?

7 A. In that section.

8 Q. In that section?

9 A. Uh-huh.

10 Q. Okay. So, again, you would  
11 have different job duties and  
12 responsibilities than everybody else working  
13 around you; is that not true?

14 A. That's true.

15 Q. Okay. So, then, is a project  
16 list unreasonable?

17 A. I don't think that a project  
18 list is unreasonable. I think it's  
19 unreasonable in that he asked only me to do  
20 it.

21 Q. But you were the only one who  
22 held that job title; right?

23 A. Yeah. But I'm not the only

**FREEDOM COURT REPORTING**

Page 255

1 employee there. There was --

2 Q. So, it's your contention,  
3 then, every employee like Let me just  
4 give you the example of my law firm. I'm a  
5 lawyer in this firm, and I have a secretary.  
6 Do you think the same rules should apply to  
7 her work as to my work?

8 A. Well, certain rules should.  
9 There are some that would not apply, but  
10 certain should, standard rules.

11 Q. Well, if I require her to keep  
12 a list of what she's going to do every day?

13 A. I don't think that's  
14 unreasonable.

15 Q. Okay. Does that mean I have  
16 to have a list for my boss upstairs?

17 A. I think you should. I think  
18 you should.

19 Q. I thought that's what you were  
20 going to say.

21 A. If you're going to ask your  
22 employee to have a list, I think you should  
23 set an example. I think you should have a

**FREEDOM COURT REPORTING**

Page 256

1 list for yours, too.

2 Q. So, you think, then, the same  
3 rules should apply to you, no matter what  
4 your job title is?

5 A. Certain rules.

6 Q. Okay. Next it says: Each  
7 Friday you are expected to send me an e-mail  
8 describing the assignments you worked on  
9 during the work and their status, and then  
10 it gives an example. Failure to adhere to  
11 this portion of the Corrective Action Plan  
12 will result in a lowering of your annual  
13 evaluation and additional corrective actions  
14 being taken. Are you okay with that?

15 A. Can you repeat that again for  
16 me, please.

17 Q. Reach Friday you are expected  
18 to send me an e-mail describing the  
19 assignments you worked on during the week  
20 and their status. And then it gives an  
21 example. Failure to adhere to this portion  
22 of the Corrective Action Plan will result in  
23 a lowering of your annual evaluation and

**FREEDOM COURT REPORTING**

Page 257

1 additional corrective actions being taken.

2 Are you okay with that?

3 A. I'm okay with the first part.

4 Q. But you don't want to be  
5 disciplined for it, then, if you fail to do  
6 it?

7 A. Well, I don't think that --  
8 Say, for instance, if something happens I  
9 get busy and I can't send you the e-mail  
10 that you've asked me for, or it could be  
11 beyond my control. I could be upstairs  
12 working on some maps or something. Somebody  
13 else could have asked me to do something.  
14 If I don't get back down to do that e-mail  
15 to you, I think that that's asking -- I have  
16 a problem with that.

17 Q. Well, let me ask you this,  
18 Ms. Coley. This --

19 A. If I could send it as soon as  
20 I'm available to send it, I think so.

21 Q. Is it fair to say that you  
22 don't want any rule to apply to you that may  
23 result in a lowering of your score on your

**FREEDOM COURT REPORTING**

Page 258

1 evaluation?

2 A. No, it's not fair to say that.

3 Q. Well, then, what rule are you  
4 willing to abide by, because each one we've  
5 talked about, Ms. Coley, you said: Only if  
6 I can do it, or only if I can get an  
7 extension if I need it?

8 A. I'm willing to abide by the  
9 same guidelines as any other employee, not  
10 specific rules you have set up just for me  
11 to go by.

12 Q. Even if you have different job  
13 responsibilities?

14 A. Job responsibilities won't  
15 have anything to do with some of the rules  
16 that were set up. If you have jobs -- If  
17 you have employees, no matter what capacity  
18 they're in, they're going to have the same  
19 -- even if you are a nurse, if you ask me  
20 for a project list, I think that you should  
21 ask the nurse for a project list.

22 Q. Well, that's your opinion,  
23 Ms. Coley --



**FREEDOM COURT REPORTING**

Page 259

1           A.       It is my opinion.

2           Q.       -- but you're not the one  
3 making the rules about who gets to have a  
4 project list.

5           A.       Well, neither was Mr. Murphy.

6           Q.       Well, he was making the rule  
7 about you. And you just don't like them,  
8 you told me.

9           A.       Well, I don't like some of  
10 rules. I didn't say I didn't like any of  
11 the rules. I said that I was satisfied with  
12 abiding by the same rules as everybody else.  
13 These were not the same rules --

14          Q.       Yeah. So you only like rules  
15 that apply to everybody across the board.  
16 Any time it's different, you don't like it;  
17 is that a fair statement?

18          A.       Well, if it's different and  
19 it's negative toward me.

20          Q.       How is -- Let me ask you this.  
21 How is it negative to require you to provide  
22 a project list and to tell you what's going  
23 to happen in advance if you don't do it?

**FREEDOM COURT REPORTING**

Page 261

1 standards, at best. Do you have a problem  
2 with that?

3 A. Yes, I do.

4 Q. Okay. Do you have a problem  
5 with the first part: A copy of this will be  
6 placed in your personnel file.

7 A. That's what I have a problem  
8 with. Because what I'm saying is, right  
9 back to what I've been saying all the time,  
10 instructions to an employee should not be  
11 placed in your personnel file.

12 Q. Okay. I understand that you  
13 think that that's something that shouldn't  
14 go in the file.

15 A. Well, nobody else has them in  
16 their files.

17 Q. And have you seen those files?

18 A. I've never talked to an  
19 employee, in my whole almost twelve years,  
20 who has had instructions placed in their  
21 employee files.

22 Q. And have you seen their  
23 personnel files?

**FREEDOM COURT REPORTING**

Page 265

1 Q. Okay. First, let's talk about  
2 -- Well, tell me what disparate treatment  
3 means to you.

4 A. It means that I'm being  
5 treated differently from other employees  
6 that I work with, and treatment that has  
7 caused me hardships, or for me to be  
8 uncomfortable in situations.

9 Q. Okay. And we'll talk about  
10 what you consider to be harassment in a  
11 minute, but let's go ahead and talk about  
12 the retaliation. I want you to list for me  
13 every single thing you think was an act of  
14 retaliation that you're referring to in this  
15 paragraph.

16 A. I think that the evaluation  
17 that Mr. Mike Murphy gave me was  
18 retaliation, in retaliation to my  
19 complaining about Ms. Rawls' assault on me.

20 Q. Okay. So, you think  
21 Mr. Murphy's evaluation, which is the one we  
22 just went over; is that right?

23 A. Right.

**FREEDOM COURT REPORTING**

Page 266

1 Q. So, you're saying that that  
2 was an act of retaliation?

3 A. Yes, I think it was, to give  
4 me a low score.

5 Q. So, the low score in that  
6 evaluation, you think was in retaliation?

7 A. Yes, ma'am. Because some of  
8 the duties I didn't even perform. Some of  
9 those duties I never performed.

10 Q. Which duties are you talking  
11 about?

12 A. Let me go back to the  
13 document. See where it says N/A  
14 (indicating), I never performed those.

15 Q. So, do you think you were  
16 evaluated on them?

17 A. In his office, I never  
18 completed travel forms.

19 Q. Let me see what you're  
20 pointing to.

21 A. Okay. On the back of the  
22 evaluation. Right here (indicating). See.

23 Q. Okay. Well, because it says:

**FREEDOM COURT REPORTING**

Page 267

1 Not applicable there under the rating --

2 A. I did not perform them. So  
3 they shouldn't have been even listed.

4 Q. Well, wait a minute,  
5 Ms. Coley. By the fact that it says: N/A,  
6 doesn't that mean to you you were not  
7 evaluated on it? There's no score there.

8 A. Well, it looks like I could  
9 have been evaluated on it, even though it  
10 does say --

11 Q. But it says: N/A.

12 A. So, why would he list it?

13 Q. Well, he listed it, but then  
14 said it is not applicable. So isn't that  
15 the same thing?

16 A. Well, if you're not going to  
17 do it, why list it?

18 Q. Well, maybe that's because  
19 these ten things are enumerated as  
20 responsibilities normally for your job. I  
21 don't know why. Do you know why?

22 A. No, I don't.

23 Q. But the truth is, it says:

**FREEDOM COURT REPORTING**

Page 268

1 N/A beside three of these. So you weren't  
2 evaluated on them; right?

3 A. Okay. I never had to  
4 establish priorities for completion of a  
5 division project, I never had to do that.

6 Q. You never had to make  
7 decisions about what needed to be done  
8 first?

9 A. No. I was always told.

10 Q. You were always told?

11 A. What I needed to do.

12 Q. Okay.

13 A. If I was told.

14 Q. If you were told?

15 A. Uh-huh.

16 Q. So, if you weren't told, do  
17 you think it was up to you, based on your  
18 many years of experience?

19 A. Well, I was never told to do  
20 anything that I didn't do. That's what I'm  
21 saying. My instructions -- The instructions  
22 that I was given always came from him.

23 Q. Okay. What else?

**FREEDOM COURT REPORTING**

Page 269

1           A.       What, I mean, serves as  
2       secretary and administrative support --

3           Q.       Were you not serving as a  
4       secretary and an administrative support, as  
5       an ASA II?

6           A.       I mean, that's just -- That's  
7       just a title. It doesn't state what I did  
8       or how I did or what. It's just a title.

9           Q.       So, you're just unhappy with  
10      this whole document; is that right? You  
11      don't like the way they described your  
12      duties?

13          A.       Not the whole document. I'm  
14      unhappy with the things that I'm pointing  
15      out to you.

16          Q.       Okay. Anything else?

17          A.       Well, I never really had no  
18      files to establish and maintain. There  
19      wasn't files -- There weren't any files.

20          Q.       Okay.

21          A.       When I was in his office,  
22      there weren't any.

23          Q.       Okay. And you filed a

**FREEDOM COURT REPORTING**

Page 274

1 you think people went out and changed your  
2 work?

3 A. I'm saying that I don't know  
4 that that happened or not. I'm saying that  
5 they could have. They had the capability.

6 Q. Do you know if what was on the  
7 Q drive was the basis of the evaluation?

8 A. I don't know that.

9 Q. Okay. Back to paragraph  
10 six --

11 A. But the letter -- Excuse me.  
12 But the letters were mentioned.

13 Q. Yeah. I see the letters.

14 A. And the letters were the ones  
15 that I remember I got the zero score on.

16 Q. Uh-huh.

17 A. And that's why I'm giving an  
18 explanation as to the letters.

19 Q. Okay. Going back to paragraph  
20 six, you were telling me that this  
21 evaluation by Mr. Murphy, you think, is in  
22 retaliation because of complaints you made.  
23 Is there any other act of retaliation?



**FREEDOM COURT REPORTING**

Page 275

1           A.           Other than the fact that I  
2 think that he -- he had set out from the  
3 offset, because he never wanted me to come  
4 to work for him.

5           Q.           Okay. Ms. Coley, my question  
6 is, is there any other act of retaliation  
7 besides the evaluations? I'm looking for  
8 concrete instances.

9           A.           I think that that was an act  
10 of retaliation, with the evaluations,  
11 because he never wanted me to come to work  
12 for him.

13          Q.           I understand you think the  
14 evaluation was. But I'm asking for anything  
15 else. I understand the retaliation is one  
16 thing. I'm looking for the next thing.

17          A.           Can you explain a little bit  
18 further what you're looking for to me?

19          O.           Well, you say in your lawsuit  
20 that: Defendant's conduct is discriminatory  
21 with respect to the following, and you check  
22 other, and you say: Retaliation, because of  
23 complaints made to HR regarding harassment

**FREEDOM COURT REPORTING**

Page 277

1 back to the evaluation, doesn't it?

2 A. It does.

3 Q. Okay. Besides the evaluation,  
4 anything else? And I'm not saying there is  
5 anything else, I'm just telling you now is  
6 the time to tell me.

7 A. And the remarks that he made  
8 to me.

9 Q. Okay. What remarks did he  
10 make to you?

11 A. Well, during a meeting that we  
12 had about the last assault on me by  
13 Ms. Rawls, he -- in a condescending way he  
14 looked at me and looked at Ms. Rawls and  
15 said: I can see why she would be afraid of  
16 you. Well, I wanted to know why he felt  
17 that way.

18 Q. Did you ask him?

19 A. I did.

20 Q. And what did he say?

21 A. Well, just looking at you and  
22 looking at her, I can tell why she would be  
23 afraid. He never really answered me.

**FREEDOM COURT REPORTING**

Page 278

1 Q. Well, how did she look?

2 A. I mean, how did she look?

3 Q. Yeah. He said it was because  
4 of the way she looked and the way you  
5 looked. Tell me how she looked.

6 A. No. He said: By looking at  
7 her and looking at me, myself.

8 Q. Okay. So, he was looking at  
9 her, and I'm asking you, in your opinion,  
10 how did she look when you were looking at  
11 her?

12 A. She looked like a person to  
13 me.

14 Q. Okay. So, you don't know what  
15 he meant?

16 A. I don't know what he meant.  
17 But I did ask him the question as to what he  
18 meant by that.

19 Q. And his response was?

20 A. His response -- He didn't  
21 really give me a response.

22 Q. Okay. So, that's a --

23 A. I wonder if he meant it was

**FREEDOM COURT REPORTING**

Page 279

1 because I'm black, a black lady, or --

2 Q. Did you ask him that?

3 A. I did not ask him that.

4 Q. Okay. So, that's two things  
5 you've told me that you think are  
6 retaliation from Mr. Murphy; right?

7 A. Uh-huh.

8 Q. Anything else? Any other act  
9 of retaliation?

10 A. Not that I can think of right  
11 now.

12 Q. Okay. And you say that that  
13 retaliation was a result of the complaints  
14 you made to HR. What complaints did you  
15 make to HR?

16 A. I made -- I -- When I had the  
17 first assault that I had, Ms. Rawls, I did a  
18 write-up about what happened and I turned it  
19 in to personnel.

20 Q. Okay. And we're going to talk  
21 about that in a minute.

22 A. And the second one I turned in  
23 to personnel. And the third one is I think

**FREEDOM COURT REPORTING**

Page 280

1 that he retaliated against me because they  
2 sent me to his area when he really didn't  
3 want me there.

4 Q. Why did he not want you there?

5 A. Well, prior to the agency  
6 placing me in his area, he went to  
7 personnel, viewed my personnel records,  
8 again, it goes back to that statement, the  
9 attachment, he viewed, and he and Ms. Cathy  
10 Hall felt like -- Cathy Hall was the deputy  
11 commissioner for the area, felt like they  
12 were getting a problem employee.

13 Q. Was that accurate?

14 A. It was inaccurate.

15 Q. Okay. And how do you know  
16 they felt like they were getting a problem  
17 employee?

18 A. Because the deputy  
19 commissioner, Mr. Lee Maddox, called me into  
20 the office, sit down and talked with me and  
21 told me that they had expressed some  
22 concerns about getting an employee that was  
23 not -- was a problem employee.

**FREEDOM COURT REPORTING**

Page 281

1 Q. Uh-huh.

2 A. And I immediately asked him  
3 then, I said: It appears that Mr. Murphy  
4 and Ms. Hall does not want me in their unit.  
5 Could you please place me somewhere else in  
6 the agency, with someone who would be happy  
7 to work with me.

8 Q. Did you at any time think,  
9 wow, this gives me an opportunity to really  
10 show them what a great employee I am, and to  
11 prove them wrong and show them I'm not a  
12 problem employee?

13 A. Well, of course, I did.

14 Q. And did you make every effort  
15 to do that?

16 A. I did make every effort to do  
17 that.

18 Q. But you weren't successful in  
19 doing that?

20 A. Obviously not.

21 Q. Okay. So, those are the  
22 complaints. You told me about two that  
23 we're going to talk about in a minute. I

**FREEDOM COURT REPORTING**

Page 286

1           A.           I named some white employees  
2 who worked in the area with me, yes.

3           Q.           Okay. Are you referring to  
4 anybody else that you didn't already tell me  
5 about?

6           A.           No.

7           Q.           Okay. Then you say: White  
8 employees have resigned because they did not  
9 like the department, only to be rehired and  
10 placed where they desired. Who are you  
11 talking about there?

12          A.           Her name would be Paige Clark.

13          Q.           I'm sorry, Paige Clark?

14          A.           Uh-huh.

15          Q.           Okay. And was she an ASA II?

16          A.           She was not.

17          Q.           What job did she hold?

18          A.           I believe she was a nurse.

19          Q.           Okay. But you're comparing  
20 your position to hers; is that right?

21          A.           I'm comparing the treatment,  
22 the disparate treatment -- the treatment  
23 that she was given as opposed to the

**FREEDOM COURT REPORTING**

Page 287

1 treatment that I was given, to her.

2 Q. Okay. And the treatment that  
3 you're comparing is that she didn't like the  
4 department, so she resigned, and was rehired  
5 somewhere else where she wanted to be hired;  
6 is that right?

7 A. What I'm saying is that at the  
8 time of the agency move, we were all being  
9 sent to different areas to work. The area  
10 that she was assigned to go to, she was  
11 unsatisfied with that area.

12 Q. Do you know why she was  
13 unsatisfied?

14 A. I just think she just didn't  
15 want to work in that area.

16 Q. Okay.

17 A. Is what she told me. She  
18 didn't want to work in that area, so she  
19 just resigned.

20 Q. And then she was rehired in  
21 another area?

22 A. Yeah. They hired her back the  
23 next day, I believe.



**FREEDOM COURT REPORTING**

Page 288

1 Q. And tell me why you have a  
2 problem with that.

3 A. I have a problem with that  
4 because, you know, when I was asking them to  
5 move me, I was asking them to move me from  
6 the area where I was, working with Robin  
7 Rawls, because I had been assaulted by her.

8 I asked them to move me to  
9 another area in the agency so I would not be  
10 in that environment. I mean, this lady  
11 quit. She didn't care if she lost her job  
12 or not. I didn't quit. I just asked them  
13 to move me to another area.

14 Q. Did you get on a transfer  
15 list, Ms. Coley?

16 A. What would -- Did I get on the  
17 transfer list?

18 Q. Uh-huh.

19 A. Yes. I was on a transfer  
20 list.

21 Q. You were?

22 A. I were.

23 Q. Was there anybody else besides

**FREEDOM COURT REPORTING**

Page 289

1 that nurse?

2 A. I mean -- Rephrase the  
3 question for me, please.

4 Q. Yeah. I'm going back to where  
5 you say: White employees are not subjected  
6 to the treatment I'm receiving. White  
7 employees have resigned because they did not  
8 like the department, only to be rehired in a  
9 place where they desired. You told me about  
10 the nurse. Is she the only one you're  
11 talking about there?

12 A. She's the only one that  
13 resigned.

14 Q. Well, is there anybody else  
15 that you claim was subject to better  
16 treatment than you, or not subject to the  
17 treatment you were receiving? I want to  
18 know who you're talking about when you write  
19 that sentence?

20 A. Okay. There was -- There was  
21 another employee by the -- I don't remember  
22 what Dawn's last name was. I don't know if  
23 she had any problems or not. But she -- she

**FREEDOM COURT REPORTING**

Page 290

1 requested -- You know, in doing the movement  
2 it was simple, she requested to be given a  
3 window, and they gave her a window.

4 Q. Uh-huh. Did you ask for a  
5 window?

6 A. Well, I didn't want a window.  
7 I wanted to be moved out of the office with  
8 Robin Rawls grabbing and pushing and jumping  
9 in front of me.

10 Q. Okay. Do you think those  
11 requests are different, though, asking for a  
12 window and --

13 A. I think they that -- I think  
14 that they are different requests. But I  
15 think that my request had a little bit more  
16 weight to it, don't you?

17 What I'm trying to get across  
18 here is that if you can hire a person back  
19 and put them in an area where they desire to  
20 work, and if a person can request of you to  
21 be moved in place where a window is, surely  
22 you can move me to a place where there's  
23 another opening for ASA II to get me out of

**FREEDOM COURT REPORTING**

Page 291

1 a situation where I'm being assaulted.

2 Q. Do you know of other openings  
3 for ASA IIs?

4 A. There was other openings.

5 Q. Which ones?

6 A. There was an opening in  
7 Certification that I interviewed for as an  
8 ASA II.

9 Q. But you didn't get the job?

10 A. I did not get the job.

11 Q. Do you know why?

12 A. I do know why. Because the  
13 positions were upgraded after I interviewed  
14 for them. After they made the announcement,  
15 I went and interviewed for the job, they  
16 were upgraded. And the supervisor told me  
17 she was going to hire me.

18 Q. Didn't that eliminate  
19 everybody else who was an ASA II? If they  
20 upgraded it, then people who were ASA IIs  
21 like you, then couldn't get the job; is that  
22 right?

23 A. Yes. If they were an ASA II

**FREEDOM COURT REPORTING**

Page 292

1 like me, they couldn't get the job. But why  
2 was the job suddenly upgraded?

3 Q. Okay. Anybody else,  
4 Ms. Coley, that you're referring to in that  
5 paragraph?

6 A. There was two employees that I  
7 know that were having -- that wanted to swap  
8 positions. They were allowed to do that.

9 Q. And did they hold the same  
10 position?

11 A. They did hold the same  
12 position.

13 Q. Was that your position, ASA  
14 II?

15 A. It was.

16 O. It was?

17 A. Uh-huh.

18 Q. Were they in the Medicaid  
19 Department?

20 A. They were in the Medicaid  
21 Department.

22 Q. Okay. Did you ask for one of  
23 their positions?

**FREEDOM COURT REPORTING**

Page 293

1           A.       No, I didn't want their  
2 position. I only wanted to be moved in a  
3 position where I could be moved to get away  
4 from Ms. Rawls.

5           Q.       Okay.

6           A.       Because I was in a situation  
7 where I was being assaulted.

8           Q.       Okay. And then you say: No  
9 reasons have been offered for these actions.  
10 Do you think that Medicaid, or anybody else  
11 owed you explanations for their employment  
12 decisions with regard to people who were not  
13 ASA IIs?

14          A.       I think Medicaid owed me an  
15 explanation as to why they were not moving  
16 me out of a situation that was stressful.  
17 It was a stressful workplace for me.

18          Q.       Was it?

19          A.       It was.

20          Q.       And they didn't tell you why  
21 they were refusing to move you?

22          A.       Well, he -- Mr. Maddox, when I  
23 talked with him, told me that he didn't have

**FREEDOM COURT REPORTING**

Page 294

1 anywhere to place me at the time.

2 Q. Okay.

3 A. But there were opportunities  
4 in the future, right after that, for him to  
5 place me, that I knew of. And I was still  
6 at Medicaid, that could have gotten me out  
7 of that situation, Ms. Carter.

8 Q. Did you talk to him again?

9 A. I did talk with him. And on  
10 each occasion that -- I talked with him, I  
11 think, on two occasions. When I talked with  
12 him, he was really rude to me. When I went  
13 in to talk with him, I sit down and I told  
14 him that I came -- And, actually, when I sit  
15 down to talk with him about it, what I -- he  
16 didn't even let me finish.

17 I was fixing to go through a  
18 situation then where I was going to explain  
19 to him what happened. And I think he got  
20 the wrong impression. So he asked me to  
21 leave twice. The first time he asked me to  
22 leave, I just thought, well, maybe if he'll  
23 just hear me out he'll understand what I'm

**FREEDOM COURT REPORTING**

Page 301

1 Q. Anything else?

2 A. Like prioritizing work, I  
3 hadn't done any of that.

4 Q. In all your years of working,  
5 you've never had to prioritize things?

6 A. Yes, in my State career I  
7 have, but not here.

8 Q. What kind of training did you  
9 think you needed to be able to prioritize  
10 your work?

11 A. Excuse me. I was scheduled  
12 for training because they were saying that I  
13 was having problems with this and that.  
14 They scheduled me for some training, but  
15 they cancelled it.

16 Q. Do you know why they cancelled  
17 it?

18 A. Saying that I was counting  
19 some pill packs and the pill packs weren't  
20 finished being counted.

21 Q. So, you hadn't finished what  
22 you had been assigned to do, so you couldn't  
23 leave to go to the training, is that what



**FREEDOM COURT REPORTING**

Page 302

1       you're telling me?

2               A.       Well, the training -- The way  
3       they schedule the training is, they pay for  
4       us to be trained. And they were supposedly,  
5       since they had me on the Corrective Action  
6       Plan, supposed to have me a formal training  
7       going on. So if you're not going to let me  
8       go to the training to get the training, so  
9       how do you expect me to improve?

10              Q.       Okay. So, do you recall what  
11       that training was for?

12              A.       No. I do remember the date  
13       that it was cancelled.

14              Q.       Okay.

15              A.       Because it was my birthday.

16              Q.       All right. Remind me what day  
17       that is.

18              A.       It was August 13, 2003.

19              Q.       Okay. Paragraph five goes on  
20       to say that: Although my evaluation states  
21       I meet satisfactory standards, unfounded  
22       statements, remarks, were placed in my  
23       personnel file, given to other State

**FREEDOM COURT REPORTING**

Page 305

1           A.       Well, there was an incident  
2       that I mention later on in this document  
3       about an employee who offered to help me  
4       because he knew I had been given an overload  
5       of work.

6           Q.       Tell me that again.

7           A.       I said that there was an  
8       incident that happened with a coworker who  
9       offered to help me with some of my job tasks  
10      because he knew that I had been given an  
11      overload of work.

12          Q.       I think you refer to that just  
13      a little bit down in the letter. Can I talk  
14      about it there?

15          A.       I do. That's what I was  
16      telling you.

17          Q.       Okay. But aside from that,  
18      nothing else?

19          A.       No.

20          Q.       Okay. Have you already told  
21      me everything that you think was false in  
22      that document?

23          A.       I believe I have at this time.

**FREEDOM COURT REPORTING**

Page 309

1           A.       I don't remember what Myron's  
2 assignment was.

3           Q.       Was he an ASA II like you?

4           A.       I don't think he was.

5           Q.       Do you think it's unreasonable  
6 for your employer to expect you to do your  
7 job yourself, without getting help from  
8 other departments who already have work  
9 assignments?

10          A.       Mr. Uptain, he was in my  
11 section.

12          Q.       So, he was in your section,  
13 but he didn't hold the same job as you?

14          A.       He did not hold the same job.

15          Q.       Did he have his own work  
16 assignments?

17          A.       Well, the particular  
18 assignment that we were discussing, he and  
19 another coworker had. When he approached me  
20 about it, he told me that he and the other  
21 coworker had developed a method to do it.

22                   And that's why he was  
23 offering, because he knew that I had a

**FREEDOM COURT REPORTING**

Page 310

1 number of assignments going on. So he  
2 offered to help me with that particular one  
3 because they had come up with a method that  
4 they were to do it and get it done quickly.

5 He also stated that he knew  
6 that it would free me up to work on some of  
7 my other projects.

8 Q. But, ultimately, his boss  
9 didn't let him help you; right?

10 A. No, she didn't.

11 Q. Okay.

12 A. And that's when I ran into the  
13 problem with them saying that I was not  
14 doing my work, or that I wasn't meeting  
15 deadlines.

16 Q. Okay. Next you claim that  
17 from then on your supervisor singled you  
18 out, quote: As I now have concerted efforts  
19 on the part of higher-ups in this agency to  
20 place me under supervisors willing to go  
21 along with the discrimination and racism  
22 against me.

23 Are you talking about the

**FREEDOM COURT REPORTING**

Page 313

1 Q. Okay. You say: There have  
2 been unfair practices leveled against, and I  
3 assume you mean against you; is that right?

4 A. Yes.

5 Q. And you say: Those were the  
6 attacks by Robin Rawls.

7 A. One was the attack by Robin  
8 Rawls. And another was Mr. Maddox, the way  
9 he treated me when I went in.

10 Q. Which is what you've already  
11 told me about?

12 A. Yes.

13 Q. Okay.

14 A. And I already talked to you  
15 about the positions that he upgraded to keep  
16 me from being moved there as an ASA II.

17 Q. Okay. Anything else?

18 A. Well, I think Ms. Herman was  
19 unfair to me, in a way.

20 Q. Commissioner Herman, you're  
21 talking about?

22 A. Yes, Commissioner Herman.

23 Q. Okay.

**FREEDOM COURT REPORTING**

Page 314

1           A.       I think she was unfair to me  
2 because she had the authority to do  
3 something about this and she just let it go  
4 on.

5           Q.       You mean just by virtue of her  
6 position as the commissioner?

7           A.       That's right. By virtue of  
8 her position.

9           Q.       You're not referring to any  
10 specific --

11          A.       By virtue of her position.

12          Q.       Okay. Then you go on to say:  
13 As there are certain ones in this  
14 organization who are allowed to break agency  
15 rules and State laws as well.

16                   And I believe before you told  
17 me about people that you thought didn't have  
18 to follow the rules, generally, and who  
19 didn't have to notify their supervisors  
20 about their comings and goings. What  
21 certain ones are you referring to here, if  
22 they're different?

23          A.       They're not different.

**FREEDOM COURT REPORTING**

Page 333

1 about: I can see why she'd be afraid of  
2 you?

3 A. What else was he talking  
4 about? Because I'm not that much bigger  
5 than she is. I'm not a fat person. So I'm  
6 not huge.

7 Q. Do you think maybe he was  
8 talking about your demeanor?

9 A. I doubt it, because my  
10 demeanor -- Unless you're just a person who  
11 is timid -- I've never had anyone say that  
12 they were afraid of me before.

13 Q. Okay. But he did not say that  
14 he was talking about your race, did he?

15 A. No, he didn't.

16 Q. Okay. Next you say you asked  
17 for a transfer to an area with less stress,  
18 and that your health was being affected.  
19 You testified before that you were in good  
20 health. Are you just talking about the  
21 overall stress of what was going on?

22 A. Well, I was working in a  
23 stressful environment.

**FREEDOM COURT REPORTING**

Page 356

1 you met with Mr. Maddox before then about  
2 these incidences?

3 A. Yes. That was the time that  
4 he asked me to leave, I believe.

5 Q. Okay. So, this time he had  
6 somebody else in there with him, his  
7 secretary, Ms. Jones?

8 A. Yes. She was in there that  
9 time, also.

10 Q. Oh, she was?

11 A. Uh-huh.

12 Q. And you say here that he tells  
13 you that if you think you're going to come  
14 in there and talk about Ms. Finch, that you  
15 need to go ahead and leave now. And you  
16 recall that as being the case?

17 A. Yes.

18 Q. And was he saying that because  
19 these complaints related to the alleged  
20 assault?

21 A. I really don't know why he was  
22 saying it.

23 Q. And so, at the end of this



## FREEDOM COURT REPORTING

Page 360

1 Q. Okay. You provided those to  
2 him?

3 A. Personnel provided them.

4 Q. Okay. Did you respond in any  
5 other way to this memo?

6 A. I did not.

7 Q. I'm sorry?

8 A. No.

9 Q. So, then, also in response to  
10 number three you provided what appears to be  
11 an undated letter to Mrs. Keeshan from you.  
12 This says: This serves as my second request  
13 for a hearing of my grievance with this  
14 agency.

15 A. Okay.

16 Q. There's also an inner-office  
17 memoranda from you to Ms. Keeshan dated  
18 10/18/04.

19 A. That's what I'm looking for  
20 now.

21 Q. That indicates she received  
22 your request on that same day.

23 A. Uh-huh.

## FREEDOM COURT REPORTING

Page 365

1 warrant the convening of a grievance panel  
2 or other action by Medicaid.

3 A. Yes.

4 Q. And they tell you that: If  
5 you believe you have been treated unfairly  
6 or abusively, that you can appeal possibly  
7 under the merit system to the State  
8 Personnel Board. Did you do that?

9 A. No. I didn't go to the State  
10 Personnel Board. I filed with the EEOC.  
11 That was another option that she gave me.

12 Q. Right. That's the next  
13 option. They say you can file an EEOC  
14 complaint, which is what you did. And she  
15 goes on to tell you that she regrets that  
16 your employment situation reached the point  
17 where you felt it necessary to file a  
18 grievance.

19 And she talked about the  
20 agency's goals to resolve things early. You  
21 know, that she hopes you will be willing and  
22 able to put past matters behind you and  
23 focus on future involvement with the agency.

## FREEDOM COURT REPORTING

Page 367

1 everything, as being the commissioner.

2 Q. Okay. Why would you decide to  
3 file with the EEOC instead of the Personnel  
4 Board?

5 A. Well, because I wanted another  
6 investigation done. I felt like they would  
7 do a thorough investigation of the matter.

8 Q. Were you dissatisfied with  
9 their investigation, too?

10 A. No, I was not.

11 Q. Even though they were unable  
12 to determine that discrimination took place?

13 A. But there were some other  
14 things that they saw that were probably done  
15 to me that were not done right. So that's  
16 probably why they gave me the right to sue.

17 Q. Oh, is that what you think?  
18 Did they tell you that?

19 A. No.

20 Q. Okay. August 20, 2004, there  
21 is a memorandum attached to Commissioner  
22 Herman's findings. To Commissioner Herman  
23 from Bill Butler, through Lee Maddox, that

## FREEDOM COURT REPORTING

Page 373

1           A.       I did care about that. But I  
2 asked to meet with the Grievance Committee  
3 so I could be given a fair investigation. I  
4 was not given my meeting with the Grievance  
5 Committee. And I think that it spells it  
6 out in the AIM book that I'm entitled to a  
7 grievance proceeding.

8           Q.       Can you tell me which  
9 provision?

10          A.       I can't right now.

11          Q.       Okay. Actually, the grievance  
12 procedures in AIM 404 provides in part: If  
13 the grievance is not resolved at the above  
14 level, it will be the responsibility of the  
15 HR office or designee to present a report to  
16 the commissioner on the grievance and the  
17 recommended action.

18                   The commissioner will review  
19 the facts to determine if the grievance can  
20 be resolved based upon the recommended  
21 action, or whether a grievance panel is  
22 warranted. Does that seem to suggest  
23 there's a choice there?

## FREEDOM COURT REPORTING

Page 374

1 A. Well, yes, it does.

2 Q. Okay.

3 A. Mr. Maddox was not the human  
4 resource person.

5 Q. That's not the question.

6 A. He's not the human resources  
7 person.

8 Q. And he apparently didn't make  
9 the decision. It says: Based on  
10 Mr. Maddox's and my investigation, it is our  
11 recommendation that the documented facts do  
12 not show an actual grievance, nor do they  
13 justify convening of the hearing panel?

14 A. You just read that he did, he  
15 had a part in this.

16 Q. Yeah, he did. But he had to  
17 be called off the investigation after you  
18 complained about him and somebody else  
19 brought in. And I believe you said a few  
20 minutes ago that they should have  
21 interviewed people. Who did they not  
22 interview that they should have talked to?

23 A. They did not interview me.

## FREEDOM COURT REPORTING

Page 381

1 information attached to her evaluation cites  
2 specific tasks and actions that Ms. Coley  
3 needed to correct in her job duties and  
4 responsibilities.

5 Although Ms. Coley refused to  
6 sign the Corrective Action Plan regarding  
7 her job duties, this information that was  
8 attached to her rating is a bona fide must,  
9 and is appropriate for placement in her  
10 personnel file.

11 According to her personnel  
12 file, there is not a rebuttal from Ms. Coley  
13 addressing those issues and the Corrective  
14 Action Plan that was submitted in July of  
15 2003.

16 In this issue Ms. Coley had a  
17 right to submit a rebuttal to the rating and  
18 request that this rebuttal be placed in her  
19 agency personnel file and State personnel  
20 file. But you didn't, did you?

21 A. I didn't do a rebuttal.

22 Q. Okay. A research of  
23 Ms. Coley's personnel file by Henry Davis

## FREEDOM COURT REPORTING

Page 382

1 did not reveal any other information  
2 regarding a rebuttal, except the information  
3 dated June 13, 2003, that was attached to  
4 your Form 13 appraisal for 2003.

5 The only information that is  
6 in her agency personnel file is a memorandum  
7 dated January 12, 2000, from Benita  
8 Crosskno, office manager at Alabama DOT to  
9 Ms. Elaine Mayes Coley -- I don't remember  
10 you telling me your name was Mayes.

11 A. That was my second name. I  
12 told you my maiden name, Morris.

13 Q. Okay. So, Mayes was the name  
14 of your ex-husband?

15 A. Yes.

16 Q. Okay. -- for insubordination,  
17 with copies to Larry Lawsette's personnel  
18 file, and filed stating -- citing State  
19 Personnel Board rules section 670X19.01.  
20 General Work Rules 2B, for reasons for the  
21 memorandum regarding insubordination.

22 Then he goes on to talk about  
23 your allegation that Medicaid provided

## FREEDOM COURT REPORTING

Page 383

1 information to DOT, or another department.  
2 And I believe we talked before, you  
3 complained about them providing your  
4 personnel file and said it was used against  
5 you; is that right?

6 A. Yes.

7 O. Let me read to you what it  
8 says here. I did not obtain any information  
9 that validates Ms. Coley's charge of a  
10 reason for her not being selected from the  
11 ASA III certificate of eligibles.

12 Please note that although  
13 Ms. Coley states she is number one on the  
14 register, there are four other people ranked  
15 number one on the ASA III register.

16 Therefore, if DOT used  
17 Ms. Coley's 2003 annual rating and attached  
18 documentation outlining tasks that needed to  
19 be improved, this act is between State  
20 personnel and DOT, since Ms. Coley's overall  
21 rating in 2003 was meets standards.

22 Do you have a problem with any  
23 of that?



## FREEDOM COURT REPORTING

Page 400

1 to DOT from Medicaid?

2 A. Did I file one with Medicaid?

3 Q. With DOT.

4 A. For?

5 Q. Failing to hire you when you  
6 applied from the ASA III register for a  
7 lateral transfer.

8 A. Are you saying did I file a  
9 grievance?

10 Q. Yes.

11 A. I did.

12 Q. Okay. So, then, you have two  
13 grievances against DOT?

14 A. Yes.

15 Q. And you don't have a file at  
16 home with all that information in it?

17 A. I don't have a file.

18 Q. You didn't keep any of that?

19 A. I don't -- I had some of  
20 things, like I said, some of them were  
21 destroyed.

22 Q. Some?

23 A. Well, I don't know which ones

## FREEDOM COURT REPORTING

Page 402

1           A.       I did get a hearing at  
2 personnel on that particular issue because I  
3 think they lumped them together, because I  
4 also, you know, wrote the letters to  
5 personnel about being passed over.

6           Q.       So, you filed a grievance with  
7 the Personnel Department?

8           A.       No. I filed a grievance. I  
9 asked personnel to meet with them, which I  
10 already let you know about in here. I asked  
11 them to meet with them about the passovers.  
12 I asked them to meet with the Personnel  
13 Board about the passovers.

14          Q.       Did they conclude that racial  
15 discrimination had taken place, Ms. Coley?

16          A.       The conclusion was that they  
17 upheld Transportation was right in passing  
18 over me.

19          Q.       Did you appeal that decision?

20          A.       I did.

21          Q.       Did you win the appeal or lose  
22 the appeal?

23          A.       I haven't heard anything from

## FREEDOM COURT REPORTING

Page 427

1 A. Where are you?

2 Q. In your responses.

3 A. Number?

4 Q. Two.

5 A. Okay.

6 Q. Do you see that?

7 A. Yes.

8 Q. Okay. Before you told me you  
9 had good mental and physical health. Is  
10 that still true?

11 A. Yes, it is.

12 Q. Okay. You said you were  
13 denied training. We talked before about the  
14 training you didn't get to attend. Is there  
15 anything else you need to add to that?

16 A. No.

17 Q. Then you say: Job positions  
18 were upgraded to assure the positions were  
19 not available to me. And you talked some  
20 about that. But do you truly believe that  
21 the sole purpose of upgrading that position  
22 was so that you couldn't get it?

23 A. Those positions.

## FREEDOM COURT REPORTING

Page 429

1 Q. And you don't know how many  
2 more people were not able to get that job  
3 because it was upgraded, is that true, too?

4 A. I don't.

5 Q. Okay. And then you say you  
6 were assaulted twice by Robin Rawls. I  
7 think we've talked about that in great  
8 detail. Do you have anything else to add?

9 A. Nothing else.

10 Q. The investigation the agency  
11 conducted was very discriminatory and then  
12 it was slanted to a defensive posture  
13 allowing white coworkers who are employed by  
14 the agency to express and make requests for  
15 themselves. What does make requests for  
16 themselves mean?

17 A. Well, the employees that we  
18 discussed, they asked for things and were  
19 given.

20 Q. What things?

21 A. Like the lady that asked for  
22 the window. She said she didn't want to be  
23 placed in an office that didn't have a

## FREEDOM COURT REPORTING

Page 430

1 window.

2 Q. Okay.

3 A. So they gave her a window.

4 And just like Ms. Clark, she said that she  
5 did not want to go to work in an area where  
6 she didn't desire to work.

7 O. The nurse?

8 A. The nurse.

9 Q. Okay.

10 A. So they placed her in an area  
11 where she was happy.

12 Q. Okay. So, you've told -- Have  
13 you told me about everybody you're referring  
14 to there?

15 A. Yes.

16 Q. I just wanted to make sure it  
17 wasn't anything new. You say: I was never  
18 contacted or interviewed to express my  
19 concerns during the so-called investigation,  
20 although I made several written requests.

21 Ms. Coley, we just spent a lot  
22 of time talking about the meetings that you  
23 had with people. Are you denying that those

## FREEDOM COURT REPORTING

Page 431

1 took place?

2 A. Well, some of the meetings  
3 were prior to. I believe when they met with  
4 me on these things, I'm saying during the  
5 investigation I was not interviewed.

6 Q. Well, two days after you filed  
7 the grievance, you were interviewed by Lee  
8 Maddox, were you not?

9 A. I don't know if it was two  
10 days after I filed my grievance or not.

11 Q. Well, are you denying you met  
12 with him soon after you filed?

13 A. I'm not denying that I met  
14 with him, no.

15 Q. Okay. And is that the  
16 investigation that you're referring to, the  
17 one after your July 2004 grievance?

18 A. There was an investigation, I  
19 believe.

20 Q. Is that the one you're talking  
21 about here? You say: I was never contacted  
22 or interviewed to express my concerns during  
23 the investigation.

## FREEDOM COURT REPORTING

Page 433

1 Q. Okay. So, that's what you're  
2 talking about?

3 A. Yes.

4 Q. Okay. I just wanted to make  
5 sure that you were talking about the  
6 grievance you filed in July of 04?

7 A. Yes.

8 Q. Okay. Then I say: Provide  
9 the name of every Medicaid employee you  
10 allege Medicaid, or anyone acting on behalf  
11 of Medicaid, treated more favorably than  
12 Medicaid treated you. This is number three.  
13 I think we've been through all of these. I  
14 hope we have. Did we talk about Kim Black?

15 A. No.

16 Q. Okay. Who is Kim Black?

17 A. Kim Black is a white employee  
18 who was -- her position was moved into the  
19 position where I was after I was promoted  
20 from Medicaid.

21 Q. And she was an ASA III; right?

22 A. She was an ASA III.

23 Q. And you were an ASA II?

## FREEDOM COURT REPORTING

Page 434

1 A. At the time.

2 Q. Okay. And what time period  
3 was that?

4 A. She was moved to the desk  
5 where I was sitting as an ASA II in January  
6 2005.

7 Q. Okay.

8 A. As a matter of fact, she  
9 started that particular job the same day I  
10 started the job where I got promoted to the  
11 ASA III.

12 Q. Okay. You say Kim Black --  
13 You say that: She as a white coworker was  
14 having problems working in the  
15 commissioner's office.

16 A. Right.

17 Q. How do you know about those  
18 problems?

19 A. Because she had discussed  
20 them.

21 Q. With you?

22 A. With someone.

23 Q. With who?



## FREEDOM COURT REPORTING

Page 435

1           A.       People in the agency. It was  
2 a rumor that I heard.

3           Q.       Oh, it was just a rumor?

4           A.       That she said that she was  
5 having trouble and she didn't want to be  
6 there.

7           O.       Okay. So, it was a rumor,  
8 then?

9           A.       Yes.

10          Q.       Okay. So, you don't know this  
11 for a fact?

12          A.       Well, she got the job. She  
13 was moved.

14          Q.       Did she apply for it?

15          A.       That's what I based it on.  
16 Well, she didn't have to apply for it.

17          Q.       Was she on the register?

18          A.       She didn't have to be on the  
19 register.

20          Q.       They just put her in there?

21          A.       They did. Because they  
22 upgraded that desk. That was the desk of an  
23 ASA II. They upgraded that desk to move her

## FREEDOM COURT REPORTING

Page 439

1 rumor, it's based on fact because they moved  
2 her.

3 Q. Well, all you know is that  
4 they moved her. You don't know the reason  
5 they moved her, do you?

6 A. I do know the reason they  
7 moved her.

8 Q. And what is that reason?

9 A. The reason they moved her is  
10 because she requested to be moved down  
11 there.

12 Q. That's right. But do you know  
13 what the basis of the request was?

14 A. Not really.

15 Q. That's what I thought.  
16 Christa Sanders is the next person you list.

17 A. Right.

18 Q. You said: She's a white  
19 coworker working in the same unit as  
20 yourself. What position did she hold?

21 A. Ms. Sanders is a nurse.

22 Q. Okay. So, she did not hold  
23 the position of ASA II?

## FREEDOM COURT REPORTING

Page 440

1 A. She did not.

2 Q. She had problems with her  
3 immediate supervisor. How do you know about  
4 those problems, Ms. Coley?

5 A. We talked about it.

6 Q. You and Ms. Sanders talked  
7 about it?

8 A. Yes, ma'am.

9 Q. Was she one of your friends?

10 A. She was.

11 Q. Okay. Is she still your  
12 friend?

13 A. She is.

14 Q. Have you talked to her about  
15 this lawsuit?

16 A. No, I haven't.

17 Q. Tell me what she told you  
18 those problems were.

19 A. Well, she told me that she had  
20 some problems with -- And she didn't really  
21 go into a whole lot of detail with me about  
22 it. She said that they had some problems  
23 with some time or something that they were

**FREEDOM COURT REPORTING**

Page 441

1 having down in that section, about the time.

2 Q. What do you mean about the  
3 time?

4 A. Or her job performance, as far  
5 as turning her time in, leave.

6 Q. Okay. Anything else she told  
7 you about that?

8 A. She told me that they were all  
9 doing the same things and that they were  
10 just singling her out.

11 Q. Okay. So, she's a white  
12 woman, though, right?

13 A. She is white.

14 Q. So, she didn't think the  
15 singling her out was based on her race?

16 A. I don't know.

17 Q. Okay. Just a personality  
18 conflict?

19 A. I have no idea.

20 Q. Could yours have been just a  
21 personality conflict?

22 A. I don't think so.

23 Q. You say she was offered

**FREEDOM COURT REPORTING**

Page 442

1 employee assistance, what kind of  
2 assistance?

3 A. Well, I think that they said  
4 she had had some -- I think, if I remember,  
5 she told me she had had some prior problems  
6 with some things.

7 Q. What things?

8 A. I don't know particularly.  
9 But that they had offered her assistance and  
10 she was getting some help.

11 Q. Did she say what kind of help  
12 that was?

13 A. I think she went and talked to  
14 a psychiatrist or a psychologist, or  
15 something that they had gotten her some  
16 help.

17 Q. Did you ever ask to talk to a  
18 psychiatrist?

19 A. No, I didn't. Because I  
20 didn't think I needed to see a psychologist.  
21 Although my point was, if they figure I was  
22 having problems with my job performance,  
23 they should have offered me some help, or

**FREEDOM COURT REPORTING**

Page 443

1 they should have allowed me to get the  
2 training that was offered.

3 Q. I understand that's what  
4 you're saying.

5 A. Okay.

6 Q. You admit, though, that the  
7 agency representatives met with you over the  
8 course of several months and actually  
9 conducted an investigation in response to  
10 your grievance; is that right?

11 A. I don't -- No, that's not  
12 right.

13 Q. Well, just a few minutes ago  
14 we looked at your grievance, which was dated  
15 July 20, 2004. Two days later there's a  
16 report in the file that you acknowledge that  
17 indicates Lee Maddox met with you. Do you  
18 deny that?

19 A. Lee Maddox did not meet with  
20 me, he attempted to meet with me.

21 Q. Well, did the two of you sit  
22 together in a room and talk for a while?

23 A. Not for a while.

## FREEDOM COURT REPORTING

Page 450

1 Q. Okay. And all the other  
2 supervisors were supposed to do that, too?

3 A. All of them that were in our  
4 section at that time.

5 Q. And you know that because?

6 A. I'm sorry, you have to  
7 rephrase that question.

8 Q. How do you know that's a rule  
9 for them, because you've never been in that  
10 position, have you?

11 A. Well, I was the leave clerk.  
12 Everybody turned the leave in to me because  
13 I was keeping leave for everyone at that  
14 time.

15 Q. Okay. Did you have any  
16 responsibility, like, if Ms. Rawls failed to  
17 turn it in to you, did you have any  
18 responsibility to talk to her about it?

19 A. I had the responsibility of  
20 letting my supervisor -- the one over me  
21 know that she hasn't turned it in.

22 Q. And did you do that?

23 A. I did. I did. Yes, I did.

## FREEDOM COURT REPORTING

Page 451

1 Q. And do you know what the  
2 result of that was?

3 A. I think they had a couple  
4 meetings with her about it.

5 Q. Oh, so they addressed it,  
6 then?

7 A. I believe they did, but I  
8 don't know what the outcome was.

9 Q. Okay. You don't know what the  
10 outcome was. Okay. And then you say: I  
11 was not allowed that opportunity. Did you  
12 need to leave to pick up a child from  
13 school?

14 A. I did not.

15 Q. Okay. Do you think that just  
16 because she was given some leeway, according  
17 to you, on picking up her child from school,  
18 that you ought to be able to leave whenever  
19 you want?

20 A. I don't know if she was given  
21 the leeway or not.

22 Q. Oh, okay. So, you don't know  
23 whether she was reprimanded or denied or --



## FREEDOM COURT REPORTING

Page 452

1           A.           I know that there was a  
2 problem with it because the supervisor asked  
3 me about this.

4           Q.           Okay. So, then, it seems to  
5 you they actually addressed this problem?

6           A.           Well, it seems to me that she  
7 had lied to her supervisor about whether she  
8 was doing it or not.

9           Q.           And her supervisors followed  
10 up by asking you about it; is that right?

11          A.           Well, they did question me  
12 about the leave.

13          Q.           Okay. And you said before  
14 you're not aware of the results of what  
15 happened?

16          A.           No.

17          Q.           Okay. So, then, how was she  
18 treated more favorably than you?

19          A.           Well, I think that, first of  
20 all, she shouldn't have been able to go and  
21 get her child. That's just something that  
22 she was just doing on her own. She wasn't  
23 supposed to be able to leave and come back,

**FREEDOM COURT REPORTING**

Page 467

1 Q. Well, you filed a lawsuit  
2 based on race discrimination. And you say  
3 here that Medicaid could have promoted you  
4 to the position of ASA III in 2004 in the  
5 office of Kim Davis.

6 A. They could have promoted me.  
7 What I meant there was that in an effort to  
8 get me out of the situation that I had  
9 complained of, with the assaulting by  
10 Ms. Rawls.

11 Q. But you don't know who they  
12 hired?

13 A. I do know.

14 Q. You do?

15 A. Of the person, not the person.

16 Q. Do you know the person's name?

17 A. I believe it's Katrina  
18 Edwards, if I'm not mistaken.

19 Q. Do you know if she's white or  
20 black?

21 A. She's black.

22 Q. Okay. So, then, do you think  
23 that the decision to hire her and not hire

**FREEDOM COURT REPORTING**

Page 471

1           A.       Well, I don't know whether  
2 they would have or not.

3           Q.       Okay. I just wanted to make  
4 sure. When you said: Not against me, it  
5 made me ask the question.

6                   Number fourteen: Each person  
7 identified in the preceding interrogatory.  
8 And you just incorporated your prior  
9 responses. And I think we've covered all of  
10 that.

11                   Fifteen: The promotional and  
12 advancement opportunities you claim you were  
13 denied. Have we talked about all of those?

14           A.       Yes.

15           Q.       Number seventeen is about the  
16 promotional advancement opportunities. Do  
17 you know what your score was on the written  
18 exam administered by State personnel?

19           A.       They don't give a score. They  
20 just place you in a band, I believe.

21           Q.       In a what?

22           A.       In a band.

23           Q.       Do you know what your band

**FREEDOM COURT REPORTING**

Page 502

REPORTER'S CERTIFICATE

STATE OF ALABAMA,

ELMORE COUNTY,

I, Angela Smith, Registered Professional Reporter and Commissioner for the State of Alabama at Large, do hereby certify that the above and foregoing proceeding was taken down by me by stenographic means, and that the content herein was produced in transcript form by computer aid under my supervision, and that the foregoing represents, to the best of my ability, a true and correct transcript of the proceedings occurring on said date and at said time.

I further certify that I am neither of kin nor of counsel to the parties to the action; nor in any manner interested in the result of said case.



Angela Smith, RPR, CRR,  
for the State of  
Alabama at Large.